

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 VOCALIFE LLC,) (
5 PLAINTIFF,) (CIVIL ACTION NO.
6) (2:19-CV-123-JRG
7 VS.) (MARSHALL, TEXAS
8) (
9 AMAZON.COM, INC. and) (
10 AMAZON.COM LLC,) (OCTOBER 2, 2020
11 DEFENDANTS.) (8:25 A.M.

12 TRANSCRIPT OF JURY TRIAL

13 MORNING SESSION

14 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

15 UNITED STATES CHIEF DISTRICT JUDGE

16

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13
14 (Proceedings recorded by mechanical stenography, transcript
15 produced on a CAT system.)

08:25:23 1 P R O C E E D I N G S

08:25:23 2 (Jury out.)

08:25:23 3 COURT SECURITY OFFICER: All rise.

08:25:26 4 THE COURT: Be seated, please.

08:25:33 5 Are the parties prepared to read into the record

08:25:41 6 those items from the list of pre-admitted exhibits used

08:25:45 7 during yesterday's portion of the trial?

08:25:49 8 MR. LAMBRIANAKOS: Yes, Your Honor.

08:25:49 9 THE COURT: All right. Please proceed to do so.

08:25:52 10 MR. LAMBRIANAKOS: Good morning, Your Honor.

08:25:59 11 Peter Lambrianakos for Vocalife.

08:26:01 12 THE COURT: Good morning. Please proceed.

08:26:03 13 MR. LAMBRIANAKOS: Thank you.

08:26:03 14 The following exhibits were used yesterday and are

08:26:07 15 being moved. Plaintiff's: PTX-644, 564, 205, 1, 273, 50,

08:26:19 16 8, 2, 101, 46, 258, 36, 40, 144, 274, 1449, 276, 45, 44,

08:26:43 17 131, and 1468.

08:26:45 18 THE COURT: These are all Plaintiff's exhibits?

08:26:50 19 MR. LAMBRIANAKOS: Yes, Your Honor.

08:26:50 20 THE COURT: Does Defendant have any objection to

08:26:52 21 that rendition?

08:26:53 22 MR. AKIN: Kyle Akin on behalf of Amazon.

08:26:57 23 We have no objection.

08:26:58 24 THE COURT: Does Defendant have a similar

08:27:00 25 rendition from the list of pre-admitted exhibits to offer

08:27:03 1 into the record?

08:27:05 2 MR. AKIN: Yes, Your Honor.

08:27:06 3 The exhibits that Amazon moves into evidence from
08:27:09 4 yesterday are DTX-49, DTX-51, DTX-71P, DTX-954, DTX-955,
08:27:28 5 DTX-956, DTX-957, and DTX-959.

08:27:36 6 THE COURT: All right. Does the Plaintiff have
08:27:41 7 any objection to that rendition from the Defendant?

08:27:44 8 MR. LAMBRIANAKOS: No, Your Honor.

08:27:45 9 THE COURT: All right. Thank you, counsel.

08:27:48 10 Mr. Johnston, will you confirm that we have all
08:27:52 11 eight jurors assembled and ready, please?

08:28:14 12 I'm told we have one juror who hasn't arrived yet.

08:28:17 13 In the meantime -- hopefully, they'll be here any moment.

08:28:21 14 In the meantime, Dr. Li, if you'd like to return
08:28:24 15 to the witness stand. Come around and have a seat on the
08:28:37 16 witness stand, sir. And I remind you, you remain under
08:28:41 17 oath.

08:28:42 18 And, Mr. Re, if you'd like to go to the podium and
08:28:46 19 prepare to continue your cross-examination.

08:28:48 20 MR. RE: Thank you, Your Honor.

08:28:51 21 THE COURT: Have a seat.

08:28:52 22 (Pause in proceedings.)

08:28:52 23 THE COURT: All right. The jury is present and
08:31:16 24 ready to go.

08:31:17 25 Mr. Johnston, would you bring in the jury, please?

08:31:21 1 COURT SECURITY OFFICER: All rise.

08:31:22 2 (Jury in.)

08:31:25 3 THE COURT: Welcome back, ladies and gentlemen of

08:31:44 4 the jury. Please have a seat.

08:31:46 5 We will continue this morning with the Defendants'

08:31:53 6 cross-examination of Dr. Peter Li.

08:31:57 7 Mr. Re, you may proceed.

08:32:04 8 MR. RE: Thank you, Your Honor.

08:32:04 9 QI "PETER" LI, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

08:32:04 10 CROSS-EXAMINATION CONTINUED

08:32:05 11 BY MR. RE:

08:32:05 12 Q. Good morning, Dr. Li. How are you?

08:32:09 13 A. Good morning.

08:32:10 14 MR. RE: I'd like to call up Defendants' Exhibit

08:32:14 15 955.

08:32:14 16 Q. (By Mr. Re) Yesterday, we were discussing this

08:32:16 17 publication from 2006. Do you recall?

08:32:19 18 A. Yes.

08:32:20 19 Q. And in this application, you tried to patent adaptive

08:32:26 20 beamforming, correct?

08:32:26 21 A. No.

08:32:33 22 MR. RE: Let's take a look at Paragraph 11 of this

08:32:36 23 application.

08:32:37 24 Q. (By Mr. Re) And it states -- I'm going to read into

08:32:42 25 the record -- by using adaptive beamforming techniques,

08:32:46 1 once the beam focuses on a speaker, the acoustic beam can
08:32:51 2 further track a free-moving speakers.

08:32:55 3 Did I read that correctly?

08:32:56 4 A. Yes.

08:33:00 5 MR. RE: And if we can go to Paragraph 29.

08:33:03 6 Q. (By Mr. Re) This application describes that the
08:33:06 7 acoustic beams, and I quote, can be computed in real-time
08:33:10 8 to follow the speakers, as shown in Figure C. Correct?

08:33:15 9 A. Yeah.

08:33:22 10 MR. RE: And -- and let's take a look at Figure C.

08:33:25 11 Q. (By Mr. Re) And -- and the real-time adaptive
08:33:28 12 beamformer is shown in Figure 6C, correct?

08:33:33 13 A. Yes.

08:33:39 14 Q. And you understand that this patent application was
08:33:43 15 rejected twice by the Patent Office because the prior art
08:33:47 16 already disclosed adaptive beamformers, correct?

08:33:56 17 A. I don't have the document in front of me. If you say
08:34:00 18 that, yes.

08:34:00 19 Q. Okay. And you -- and you abandoned this application,
08:34:05 20 correct?

08:34:05 21 A. Yes.

08:34:10 22 Q. I'd now like to move on to your article.

08:34:13 23 Isn't it true that in 2008, you were -- no, you
08:34:18 24 were traveling the country demonstrating your VoiceFocus
08:34:22 25 phone and promoting it as including circular array adaptive

08:34:35 1 beamforming, noise reduction, and echo cancellation. Isn't
08:34:41 2 that right?

08:34:41 3 A. Yes.

08:34:41 4 Q. And in 2009 you presented a paper at the IEEE
08:34:41 5 International Conference on Acoustics, Speech, and Signal
08:34:47 6 Processing, correct?

08:34:48 7 A. Yes.

08:34:49 8 Q. And that paper was published, from that conference, in
08:34:55 9 2009, correct?

08:34:59 10 A. Yes.

08:35:00 11 MR. RE: And I'd like to call up that article,
08:35:03 12 DTX-14.

08:35:06 13 Q. (By Mr. Re) That's a copy of your article, correct?

08:35:10 14 A. Yes.

08:35:12 15 MR. RE: And I'd like to go to Diagram 2.

08:35:18 16 Q. (By Mr. Re) And isn't it true that Diagram 2 is the
08:35:20 17 system that you described in the article?

08:35:22 18 A. Yes.

08:35:28 19 MR. RE: And if we could color in green.

08:35:31 20 Q. (By Mr. Re) The green describes the microphone arrays,
08:35:34 21 correct?

08:35:34 22 A. Yes.

08:35:37 23 Q. And the yellow shows the DSP, or digital signal
08:35:41 24 processor, correct?

08:35:41 25 A. Yes.

08:35:41 1 Q. And the beamforming unit is in pink, correct?

08:35:46 2 A. Says beamforming.

08:35:47 3 Q. And the noise reduction unit is shown in blue, correct?

08:35:53 4 A. That's right.

08:35:54 5 Q. And in the article at the end, you list several

08:35:58 6 references; isn't that right?

08:36:03 7 A. That's right.

08:36:03 8 Q. And references are other articles or books on this

08:36:06 9 subject, correct?

08:36:07 10 A. Yes. I --

08:36:09 11 Q. And one -- excuse me.

08:36:11 12 A. But this -- if you go back.

08:36:18 13 Q. Go back --

08:36:20 14 THE COURT: Just a minute. Just a minute.

08:36:22 15 Dr. Li, you've answered the question. You've said

08:36:25 16 yes, and that's a complete answer to the question.

08:36:27 17 THE WITNESS: Okay.

08:36:28 18 THE COURT: Let's go on to the next question by

08:36:29 19 counsel.

08:36:30 20 THE WITNESS: Thank you.

08:36:31 21 MR. RE: Thank you.

08:36:33 22 Q. (By Mr. Re) In one of the references that you list in

08:36:36 23 Reference No. 4 is, in fact, the Brandstein book that I've

08:36:39 24 been holding up yesterday, correct?

08:36:40 25 A. Yes.

08:36:41 1 Q. So you were aware of the Brandstein book, obviously,
08:36:45 2 before you published this article in April of 2009, right?
08:36:49 3 A. Yes.
08:36:54 4 Q. I now would like to move on to one of your data sheets.
08:36:57 5 I'd like to show you Plaintiff's Exhibit 258, which I
08:37:02 6 believe you discussed yesterday.
08:37:07 7 Do you recall Exhibit 258, your discussions with
08:37:10 8 Mr. Fabricant yesterday?
08:37:11 9 A. Yes.
08:37:12 10 Q. And this was revised -- if I see the date correctly on
08:37:17 11 this document, it was revised on or around August 11th,
08:37:20 12 2011, correct?
08:37:21 13 A. Yes.
08:37:23 14 Q. And so if we look at the bottom portion of this page,
08:37:27 15 we can see that in August 2011, before your meeting with
08:37:34 16 Amazon, you publicly described, one, circular microphone
08:37:41 17 array; two, sound source localization; three, adaptive
08:37:49 18 beamforming; four, noise reduction; five, echo
08:37:55 19 cancellation; and, six, a DSP chip. Is that correct?
08:37:59 20 A. Yes, just the titles.
08:38:02 21 Q. Yes. And so you were publicizing this information
08:38:05 22 before -- before you ever met with Amazon in August of
08:38:14 23 2011, correct?
08:38:14 24 A. We had that document available. I don't understand the
08:38:20 25 meaning of published.

08:38:23 1 Q. But they were available. Is that what you're saying?

08:38:25 2 A. We had created that document at that time.

08:38:27 3 Q. And were these downloadable from your website?

08:38:30 4 A. I don't remember exactly if downloadable, but on our

08:38:35 5 website people can download data sheet. Data sheet can be

08:38:39 6 updated.

08:38:39 7 Q. Right. And this is one of those data sheets, right?

08:38:42 8 A. If you look today, it's not there. But, at that time,

08:38:47 9 I could not remember.

08:38:49 10 Q. Okay. But the date looks right to you, August 2011,

08:38:55 11 right?

08:38:55 12 A. Yes.

08:38:56 13 Q. Okay. We can move on.

08:38:57 14 Yesterday, you testified about an NDA between you

08:39:00 15 and Amazon. Do you remember?

08:39:01 16 A. Yes.

08:39:03 17 Q. And NDA means nondisclosure agreement, right?

08:39:07 18 A. Yes.

08:39:07 19 Q. And you understand that an NDA only protects

08:39:12 20 information that is not publicly known, correct?

08:39:21 21 A. Correct.

08:39:21 22 Q. So if the information was publicly known, it would not

08:39:26 23 be protected by an NDA, right?

08:39:29 24 A. I disagree since that's different. The data sheet is

08:39:31 25 just the titles. What I presented to Amazon also included

08:39:35 1 all technical details.

08:39:36 2 Q. Okay. Let's take a look at the agreement itself.

08:39:40 3 MR. RE: If we could call up Paragraph 1, the

08:39:43 4 second sentence in particular.

08:39:46 5 Q. (By Mr. Re) You do understand that the agreement

08:39:49 6 specifically states: As used in this agreement,

08:39:53 7 confidential information means all non-public information.

08:39:57 8 Right?

08:39:58 9 A. Right.

08:40:00 10 MR. RE: And if we go to Paragraph 2 of the

08:40:03 11 agreement.

08:40:03 12 Q. (By Mr. Re) It specifically says -- and is this

08:40:07 13 correct -- that it says that not -- that confidential

08:40:10 14 information does not include any information that is

08:40:13 15 publicly available, right?

08:40:14 16 A. Right.

08:40:15 17 Q. And so that means, to you, and you understood it to

08:40:21 18 mean, that everything that was publicly known before the

08:40:24 19 meeting cannot be confidential information under this

08:40:27 20 agreement, right?

08:40:28 21 A. From my understanding of the information, including all

08:40:32 22 the technical details. Now, if just title -- publicly --

08:40:39 23 just no title that I presented at Amazon that's included

08:40:43 24 all technical details from multiple hour meeting. It's

08:40:48 25 much more information on the data sheet.

08:40:49 1 Q. And -- but we've established that these concepts on the
08:40:54 2 board that I wrote here that I will mark as Demonstrative
08:41:00 3 Exhibit 2A, that these concepts were publicly known and,
08:41:06 4 therefore, not confidential under the NDA, right?
08:41:09 5 A. The concept -- the title, right.
08:41:12 6 Q. And, in this case, you are not asserting in any way
08:41:17 7 that Amazon violated the NDA, right?
08:41:19 8 A. That's not right. Amazon violated our NDA because the
08:41:27 9 information -- on the NDA the information can only be used
08:41:33 10 for business relations. But, actually, Amazon used our --
08:41:37 11 the information which we present at the time in the meeting
08:41:41 12 to their product, and they sold the product.
08:41:43 13 Q. But you understand that you're not asserting in this
08:41:46 14 case a claim for breach of contract under the NDA, right?
08:41:51 15 A. Could you repeat your question?
08:41:54 16 Q. You understand that in this trial, you are not
08:41:59 17 asserting any claim that Amazon violated the NDA, right?
08:42:07 18 A. Amazon violated NDA. I don't understand your question.
08:42:13 19 I -- as I said --
08:42:17 20 Q. Do you understand that the jury will not be deciding
08:42:21 21 any questions whatsoever concerning any possible breach of
08:42:26 22 any contract? Do you understand that?
08:42:29 23 A. Yeah, because what -- about the patent.
08:42:33 24 Q. Right. And so you understand that all the questions
08:42:36 25 the jury will be receiving in this case all pertain only to

08:42:40 1 the '049 patent --

08:42:42 2 A. Yes.

08:42:43 3 Q. -- correct? Okay.

08:42:47 4 And you understand that the '049 patent issued
08:42:53 5 seven years after this NDA was signed, right?

08:42:57 6 A. You talk on issue -- right.

08:43:09 7 Q. Right. So the '049 patent that the jury is going to be
08:43:15 8 deciding about, that patent did not issue until September
08:43:20 9 18th, 2018, right?

08:43:23 10 A. Right. But we filed the provisional in 2010.

08:43:31 11 Q. Right. And you also understand that the provisional
08:43:34 12 gives you no patent rights until a patent issues, right?

08:43:39 13 A. But -- right. But I know since we filed the
08:43:43 14 provisional, our idea -- our patent -- our technology has
08:43:51 15 been covered -- protect by the patent law.

08:43:53 16 Q. But the patent law, you understand, only gives you that
08:43:57 17 protection once the patent issues on September 18th, 2018?

08:44:04 18 A. That's right. So that's the reason we didn't sue you
08:44:08 19 until the patent was issued, right.

08:44:13 20 Q. Yes.

08:44:15 21 Okay. Let's now talk about how you were promoting
08:44:19 22 your technology. And I want to ask you, do you recall
08:44:23 23 promoting your technology of your VoiceFocus to Cisco in
08:44:28 24 2010?

08:44:31 25 A. To Wei Li.

08:44:33 1 Q. Do you recall promoting your VoiceFocus to Cisco in
08:44:39 2 2010?

08:44:41 3 A. I talked -- this information to Wei Li. He was my
08:44:47 4 employee. And at that time, he worked at Cisco. I didn't
08:44:54 5 contact Cisco directly.

08:44:56 6 Q. Oh, so Wei Li, he was your employee?

08:44:58 7 A. He was my employee.

08:45:01 8 Q. But he left your company in January 2008, correct?

08:45:07 9 A. Based on our account information, he left on February
08:45:12 10 1st.

08:45:12 11 Q. 2008?

08:45:14 12 A. 2008.

08:45:15 13 Q. And you're now contacting him because he works at Cisco
08:45:20 14 in 2010, right?

08:45:21 15 A. Yes.

08:45:25 16 Q. And you never entered into any business deal with
08:45:28 17 Cisco, right?

08:45:29 18 A. Could you repeat your question?

08:45:31 19 Q. You never entered in any business deal with your
08:45:35 20 VoiceFocus phone with Cisco, right?

08:45:37 21 A. Right.

08:45:37 22 Q. You also shopped your VoiceFocus phone to Apple,
08:45:45 23 correct?

08:45:45 24 A. Actually, I don't remember if I brought the -- the
08:45:58 25 VoiceFocus -- the prototype to Apple. But we did

08:46:02 1 demonstrate the circular microphone array technology to
08:46:06 2 Apple.

08:46:06 3 Q. And you gave Apple essentially the same demonstration
08:46:12 4 that you later gave Amazon in 2011, right?

08:46:15 5 A. That's different.

08:46:17 6 Q. That's different? But Apple wasn't interested in
08:46:20 7 licensing anything from you, right? So no deal with Apple,
08:46:24 8 right?

08:46:24 9 A. Apple was interested in our technology. No deal of the
08:46:30 10 Apple not because of the technology. That's because Apple,
08:46:39 11 they have some thinking about -- not on the technology
08:46:46 12 side, on the art side, on the enclosure side.

08:46:50 13 They were impressed with our microphone array
08:46:53 14 technology since we demoed it -- we compared some quality
08:46:59 15 with and without our microphone array.

08:47:00 16 And after that meeting, Apple -- Apple asked us to
08:47:08 17 send in the audio file to them because they want further
08:47:12 18 evaluation.

08:47:13 19 Later, they told me they were impressed on our
08:47:16 20 technology, but they cannot use that because at higher
08:47:22 21 level Apple, you know, is a company. They really care
08:47:28 22 about the enclosure, the art part of -- of the work. I'm
08:47:32 23 sorry, I cannot provide further information.

08:47:36 24 THE COURT: Dr. Li, you need to limit your answers
08:47:39 25 to the questions that are asked. As -- as I reminded you

08:47:43 1 yesterday, Mr. Fabricant is going to get a chance when
08:47:47 2 Mr. Re sits down to get back up and to ask you follow-up
08:47:52 3 questions.

08:47:53 4 So you should limit your answers to Mr. Re's
08:47:55 5 question to the question that's actually asked. And if
08:47:58 6 there's more that needs to be brought out, Mr. Fabricant
08:48:00 7 will do that when he gets up again. So, please, sir, if
08:48:04 8 you will limit your answers to the questions that have been
08:48:07 9 asked, all right?

08:48:08 10 THE WITNESS: Thank you, Your Honor.

08:48:09 11 THE COURT: That's fine.

08:48:10 12 Let's proceed, Mr. Re.

08:48:12 13 Q. (By Mr. Re) So my question was simply: You never
08:48:14 14 entered into any deal with Apple concerning any of your
08:48:18 15 technology, right?

08:48:18 16 A. Right.

08:48:19 17 Q. You also shopped your technology to Volkswagen, right?

08:48:21 18 A. Yes.

08:48:25 19 Q. And you never made a deal with Volkswagen either,
08:48:29 20 right?

08:48:29 21 A. Yes.

08:48:29 22 Q. And you shopped your beamforming ideas to many
08:48:33 23 companies; isn't that right?

08:48:34 24 A. Right.

08:48:34 25 Q. At least 20 companies, right?

08:48:37 1 A. Many.

08:48:37 2 Q. And these companies included Moen, M-o-e-n, right?

08:48:44 3 A. But, as I said, they -- this company does not want to

08:48:51 4 license. They want to buy our product.

08:48:53 5 Q. And -- and you ended up shopping it to Moen, and you

08:48:58 6 got no deal at Moen, right?

08:49:01 7 A. We demoed the technology to Moen.

08:49:03 8 Q. Right. And you demoed it also -- tried to have a deal

08:49:05 9 with American Standard, right?

08:49:06 10 A. Yes.

08:49:06 11 Q. And Siemens, right?

08:49:10 12 A. Yes.

08:49:10 13 Q. And TiVo?

08:49:11 14 A. Yes.

08:49:11 15 Q. And Samsung?

08:49:12 16 A. Yes.

08:49:13 17 Q. And after all those promotions to at least 20-something

08:49:17 18 companies, not a single company licensed any of your

08:49:20 19 beamformer patents, right?

08:49:21 20 A. Right.

08:49:25 21 Q. Okay. Let's go on to when you pitched Amazon.

08:49:29 22 You pitched Amazon your VoiceFocus conference

08:49:32 23 phone, right?

08:49:33 24 A. Yes.

08:49:34 25 MR. RE: And let's call up Plaintiff's Exhibit 45,

08:49:37 1 Slide 10.

08:49:41 2 Q. (By Mr. Re) And when you pitched this to Amazon, you

08:49:43 3 did not have a working VoiceFocus product, right?

08:49:48 4 A. Right.

08:49:49 5 Q. Because you never got it to work, right?

08:49:53 6 A. Right.

08:49:53 7 Q. And, in fact, you gave up on this phone two years

08:49:58 8 before you even met with Amazon, right?

08:50:01 9 A. How you know that?

08:50:08 10 MR. RE: Well, let's call up your transcript from

08:50:10 11 your deposition.

08:50:12 12 If we can call up specifically your first day

08:50:16 13 deposition, which was taken by Zoom.

08:50:21 14 Q. (By Mr. Re) Do you remember?

08:50:22 15 A. Right.

08:50:23 16 MR. RE: Page 322, Lines 13 through 18.

08:50:28 17 A. Uh-huh.

08:50:29 18 Q. (By Mr. Re) And you were asked: Internally, when did

08:50:33 19 Li Creative Technologies decide it was not going to be able

08:50:36 20 to make the VoiceFocus product work?

08:50:39 21 And you responded: I think around a year 2009.

08:50:44 22 Probably end of 2009.

08:50:46 23 Were you asked that question, and did you give

08:50:50 24 that answer?

08:50:51 25 A. Yeah, that's my answer.

08:50:55 1 Q. Okay. Yesterday, you also mentioned that you told
08:50:59 2 Amazon about an award, and you had two issued patents. Do
08:51:03 3 you remember that?
08:51:03 4 A. Yes.
08:51:04 5 Q. And the award you mentioned referred to a 2011 CES
08:51:10 6 award, right?
08:51:11 7 A. Yes.
08:51:11 8 Q. And isn't it true, sir, that that award that you
08:51:14 9 referred to was solely for the exterior design of the
08:51:19 10 product, right?
08:51:20 11 A. If you read the -- the word, the language there, that's
08:51:36 12 Design and Engineering Award.
08:51:39 13 Q. Correct. And that award was for the exterior design of
08:51:44 14 your VoiceFocus conference phone, right -- the shell?
08:51:51 15 A. Including the design.
08:51:52 16 Q. All right. The design is the way it looks, right?
08:51:55 17 A. Right.
08:51:55 18 Q. So the --
08:51:58 19 A. When we submit our work, we submit information also
08:52:00 20 about the features.
08:52:02 21 Q. Right. But the award, though, did not refer to the
08:52:06 22 technical operation of the product, correct?
08:52:08 23 A. I don't think so.
08:52:10 24 Q. Let's take a look at your deposition.
08:52:13 25 MR. RE: Let's go to the same Volume --

08:52:16 1 A. Uh-huh.

08:52:18 2 MR. RE: -- 1, Page 330, Lines 17 to 24.

08:52:22 3 MR. FABRICANT: Objection, Your Honor.

08:52:23 4 THE COURT: What's your objection, counsel?

08:52:25 5 MR. FABRICANT: I don't think it's a proper

08:52:28 6 attempt to impeach the witness with his prior testimony in

08:52:33 7 light of the answer that Mr. -- Dr. Li just gave.

08:52:35 8 THE COURT: This is not proper impeachment,

08:52:37 9 Mr. Re. I'll sustain the objection.

08:52:39 10 Q. (By Mr. Re) So you agree that the award was for the

08:52:42 11 ornamental appearance, despite the fact that it has the

08:52:46 12 word "engineering" in the title?

08:52:48 13 A. I agree with the title of the award.

08:52:51 14 Q. But you agree that the award was not for the technical

08:52:54 15 operation of the product?

08:52:57 16 A. When we submit our work, some of the -- the photo of

08:53:09 17 the enclosure and also the feature of the technique.

08:53:12 18 Q. But the people who gave the award to you never saw the

08:53:17 19 VoiceFocus product actually work, correct?

08:53:19 20 A. That's right.

08:53:27 21 Q. Similarly, you referred to two patents you had by the

08:53:32 22 time you came to see Amazon in 2011. Do you remember that?

08:53:33 23 A. Yes.

08:53:33 24 Q. But those two patents, sir -- isn't it correct that

08:53:37 25 those two patents were design patents only, right?

08:53:40 1 A. Right.

08:53:40 2 Q. And design patents only relate to how something looks,

08:53:44 3 not how it works, correct?

08:53:46 4 A. Right.

08:53:46 5 Q. And those two design patents have absolutely no

08:53:50 6 relationship whatsoever to the '049 patent in this case,

08:53:58 7 correct?

08:53:58 8 A. Well, design patent is how it look, and other design

08:54:08 9 patent on the photo -- on the picture, the circular array

08:54:13 10 is on top of that.

08:54:14 11 Q. But -- but the patents that you had by the time you met

08:54:17 12 with Amazon were only design patents, correct?

08:54:25 13 A. Only the issued patents are design patent. At the same

08:54:31 14 time, we have a patent application submitted.

08:54:35 15 Q. So the -- the only issued patents you had were the two

08:54:39 16 design patents, correct?

08:54:41 17 A. Yes.

08:54:42 18 Q. You later shopped your ideas to Samsung, correct?

08:54:47 19 A. Would you say again?

08:54:49 20 Q. You -- excuse me.

08:54:50 21 You later shopped your ideas to Samsung, right?

08:54:53 22 A. Yes, in the -- in the --

08:54:57 23 Q. And Sam -- and Samsung never licensed or bought any of

08:55:01 24 your ideas, right?

08:55:03 25 A. Right.

08:55:03 1 Q. And by this time, it was 2017, right?

08:55:12 2 A. The meeting was in 2011.

08:55:17 3 Q. Do you recall meeting with Samsung, pitching Samsung in

08:55:22 4 2017?

08:55:26 5 A. I -- I don't know what you mean by we attended Samsung.

08:55:45 6 Echo release was 2014.

08:55:48 7 Q. So the Echo was released -- the Echo, my client's

08:55:54 8 product, was released in 2014, right?

08:55:56 9 A. Right.

08:55:56 10 Q. Do you recall meeting with Samsung about the Echo in

08:56:00 11 2017?

08:56:00 12 A. We never had any meeting with Samsung about the Echo.

08:56:05 13 Q. Okay.

08:56:06 14 MR. RE: I'd like to call up Defendants'

08:56:09 15 Exhibit 689.

08:56:11 16 Q. (By Mr. Re) Do you recall this presentation or paper

08:56:14 17 dated October 17th, 2017?

08:56:17 18 A. Right.

08:56:22 19 Q. And do you recall that this was prepared for a demo and

08:56:25 20 presentation at Samsung headquarters on October 26th, 2017?

08:56:32 21 A. 2000 -- Samsung -- Echo -- yes.

08:56:39 22 Q. And at this time, you believed that your technology was

08:56:43 23 better than the Echo, right?

08:56:46 24 A. I'm still saying our technology is better than Echo.

08:56:50 25 Q. You believe that still to this day, right?

08:56:52 1 A. Yes.

08:56:52 2 Q. Because the two technologies are different, right?

08:56:57 3 A. No. Same technology but with our implementation.

08:57:02 4 Q. I didn't quite understand that. If you could just

08:57:04 5 repeat that.

08:57:05 6 A. Okay. We believe Amazon Echo was built based on the

08:57:17 7 technology which we presented in -- filed in our patent.

08:57:22 8 Q. And -- and -- but yours was still better, right?

08:57:28 9 A. On the implementation.

08:57:31 10 Q. Let's -- let's take a look to make sure we can see.

08:57:34 11 MR. RE: Let's go to Page 6 of this demonstration

08:57:37 12 document of 2017.

08:57:39 13 Q. (By Mr. Re) Do you see in this presentation you had a

08:57:42 14 comparison with Echo side-by-side? Do you see that on

08:57:47 15 Line 3?

08:57:48 16 A. Yes.

08:57:48 17 Q. And you noted in this presentation to Samsung that:

08:57:54 18 Most time, Echo cannot even wake up with TV background

08:57:58 19 noise. Do you see that?

08:57:59 20 A. I saw that.

08:58:00 21 Q. And then two bullets down you say that your technology

08:58:04 22 is newer technology than Amazon Echo. Do you see that?

08:58:09 23 A. I saw that.

08:58:09 24 Q. And you believe and still believe that your newer

08:58:12 25 technology is better than the Echo, right?

08:58:17 1 A. The same technology with a newer implementation.

08:58:24 2 Q. Okay.

08:58:24 3 A. So we call this newer technology, including the theory

08:58:30 4 part and also including the implementation part.

08:58:34 5 Q. Okay. Let's move on.

08:58:36 6 Let's go back to that launch event that you

08:58:39 7 said -- 2014.

08:58:40 8 So you were aware that Echo and Alexa -- not just

08:58:45 9 Echo, but Echo and Alexa were introduced in that New York

08:58:52 10 City event in November of 2014, right?

08:58:54 11 A. Yes.

08:58:54 12 Q. And at that event you concluded that Echo was using the

08:58:58 13 real-time beamforming ideas that you discussed at the 2011

08:59:02 14 meeting, right?

08:59:03 15 A. Right.

08:59:03 16 Q. And at that event, you determined that Echo was

08:59:12 17 infringing your now surrendered '756 patent, right?

08:59:15 18 A. Right.

08:59:15 19 Q. And -- and yesterday, you also discussed your

08:59:21 20 \$700,000.00 offer to Google; do you recall that?

08:59:27 21 A. Right.

08:59:27 22 Q. And this was after you had determined that Amazon was

08:59:31 23 allegedly infringing your surrendered '756 patent, right?

08:59:34 24 A. Right.

08:59:34 25 Q. And you knew -- excuse me.

08:59:40 1 And you knew, sir, at the time you made that
08:59:42 2 offer, that was an offer to sell your '756 patent, right?
08:59:50 3 A. I understand at that time I still have the right to use
08:59:53 4 the patent to sue Amazon.
08:59:56 5 Q. Right. But --
08:59:57 6 A. Sorry -- yeah, to sue Amazon.
09:00:00 7 Q. Yes. But I -- but you would give title to the patent
09:00:03 8 to Google, right?
09:00:05 9 A. From my understanding, we gave the right for Google to
09:00:09 10 use the patent.
09:00:10 11 Q. But you were giving Google the ownership of the patent,
09:00:14 12 and you would receive what we call a grant-back license,
09:00:19 13 right?
09:00:19 14 A. I don't remember that. At that time, I didn't consult
09:00:24 15 with patent attorney.
09:00:26 16 Q. But you knew at that time that you were going to allow
09:00:32 17 Google to purchase the patent, correct?
09:00:36 18 A. Purchase is right, to use the patent.
09:00:39 19 Q. Right. But you knew it was not to merely give them a
09:00:42 20 license, right?
09:00:49 21 A. Could you repeat your question?
09:00:51 22 Q. You knew that your offer to sell Google was not merely
09:00:56 23 giving Google a license?
09:01:02 24 A. I understand -- my understanding at that time is that
09:01:07 25 Google can -- can use the patent. That's different than

09:01:15 1 licensing -- from my understanding, licensing means they
09:01:19 2 can pay it back -- pay us every year when they use that.
09:01:25 3 Give them right means they pay us one time and then they
09:01:30 4 keep that. So my understanding at that time, we gave them
09:01:33 5 right.

09:01:34 6 Q. Let's go to your deposition.

09:01:37 7 MR. RE: In particular, I'd like to go to Page 36
09:01:41 8 of the first volume of your deposition. In particular,
09:01:46 9 Line --

09:01:47 10 MR. FABRICANT: Objection, Your Honor. I think
09:01:48 11 the --

09:01:49 12 THE COURT: What's your objection?

09:01:50 13 MR. FABRICANT: The witness should have been given
09:01:52 14 an opportunity to review his deposition and -- and before
09:01:55 15 there's an attempt to impeach him.

09:01:57 16 THE COURT: That's the proper impeachment
09:02:00 17 procedure.

09:02:01 18 MR. RE: Yes. I assume the books have been given,
09:02:05 19 the deposition. I'd like Mr. -- Dr. Li to have all of his
09:02:08 20 depositions.

09:02:10 21 THE COURT: You should inquire of the witness
09:02:12 22 whether he gave those answers to those questions under oath
09:02:15 23 before you publish that section of the deposition to the
09:02:18 24 jury.

09:02:57 25 MR. RE: May we approach the witness with the

09:02:59 1 binders?

09:02:59 2 THE COURT: His prior deposition?

09:03:01 3 MR. RE: Yes.

09:03:02 4 THE COURT: Yes, you may approach.

09:03:23 5 For the record, Mr. Fabricant, your objection is

09:03:25 6 sustained.

09:03:26 7 MR. FABRICANT: Thank you, Your Honor.

09:03:26 8 THE COURT: Let's proceed, counsel.

09:03:29 9 Q. (By Mr. Re) Dr. Li?

09:03:30 10 A. Yes.

09:03:30 11 Q. Could you please go to Volume 1 of your deposition?

09:03:34 12 A. Which page?

09:03:35 13 Q. Page 96 --

09:03:38 14 A. Line what --

09:03:39 15 Q. -- of the transcript?

09:03:45 16 A. Yes.

09:03:45 17 Q. And I'd like you to look at Page 96, Lines 14 through

09:03:52 18 Page 97, Line 2.

09:03:54 19 A. Yes.

09:03:54 20 Q. Please read that to yourself.

09:04:23 21 A. Yes.

09:04:24 22 Q. And were you asked those questions, and did you give

09:04:26 23 those answers as shown on those pages?

09:04:30 24 A. Yes.

09:04:30 25 Q. Okay.

09:04:33 1 MR. RE: Now, can we please --

09:04:35 2 Q. (By Mr. Re) Let me -- let me read to you the part in

09:04:38 3 particular.

09:04:38 4 Were you asked -- and go to Line 20, in

09:04:42 5 particular -- I mean, Line 14.

09:04:44 6 Did Li --

09:04:47 7 A. Which page?

09:04:48 8 MR. FABRICANT: Objection, Your Honor.

09:04:49 9 THE COURT: What's your objection, counsel?

09:04:51 10 MR. FABRICANT: Based on my reading of what he

09:04:53 11 just asked the witness to review, there's nothing

09:04:58 12 inconsistent about his testimony in this courtroom today.

09:05:02 13 THE COURT: Well, whether the impeachment is

09:05:06 14 effective or not, will be a matter for the jury to

09:05:08 15 determine. The form of the presentation is not

09:05:11 16 objectionable at this point.

09:05:13 17 MR. FABRICANT: Thank you, Your Honor.

09:05:13 18 THE COURT: Overruled.

09:05:14 19 Let's proceed.

09:05:15 20 Q. (By Mr. Re) I want to read into the record: Did Li

09:05:23 21 Creative Technologies ever offer anyone a license under the

09:05:28 22 '756 or '949 patent?

09:05:31 23 Answer: We offered, yes, we did.

09:05:33 24 Question: To whom?

09:05:36 25 Answer: Google.

09:05:39 1 When was that?

09:05:41 2 So Google decided not to license -- not to

09:05:48 3 purchase it.

09:05:51 4 Question: Google decided not to purchase your

09:05:54 5 patents?

09:05:55 6 Right.

09:05:56 7 And what amount did you offer the patents to

09:06:00 8 Google for?

09:06:01 9 I don't remember.

09:06:05 10 A. At that time --

09:06:06 11 Q. Did I read it correctly?

09:06:08 12 A. At that -- right.

09:06:10 13 Q. And isn't it true, based on what I just read, you even

09:06:15 14 corrected yourself when you said the word "license" and you

09:06:19 15 changed it in your own answer voluntarily to the word

09:06:25 16 "purchase"; isn't that correct?

09:06:29 17 A. That's right.

09:06:29 18 Q. And so you knew, at least at the time of this

09:06:32 19 deposition, and at the time that you made the offer, that

09:06:34 20 it was a sale of your patent, not merely a license to

09:06:41 21 Google, correct?

09:06:41 22 A. Mr. Re, I'm not an attorney. At that time, from my

09:06:47 23 understanding of the language, I think that Google want to

09:06:56 24 use our multi -- okay. Google pass the information. We

09:07:02 25 submit a proposal to Google. So Google can use our patent.

09:07:08 1 That's my understanding.

09:07:09 2 Q. But when you were deposed, it was clear you knew this

09:07:16 3 was a sale of the patent, right?

09:07:21 4 A. Again, English is not my first language. And, here,

09:07:27 5 you say the -- the purchase of licensing is different

09:07:36 6 words. When I answer your question in the deposition, I --

09:07:40 7 the truth behind my mind at that time was that Google want

09:07:45 8 to -- we propose to let Google to use our patent.

09:07:49 9 Q. But you knew at the time of your deposition, in

09:07:53 10 addition to letting Google use it, that you were going to

09:07:56 11 sell -- sell the '756 patent?

09:08:00 12 A. Sell the right, and we still can use that.

09:08:04 13 Q. Oh -- let's -- take a look at your deposition,

09:08:09 14 Volume 2, Page 533, Lines 15 to 18. And read that to

09:08:16 15 yourself.

09:08:23 16 A. You say 533?

09:08:24 17 Q. Yes, of Volume 2 of the Zoom deposition. Did you find

09:08:44 18 it?

09:08:53 19 A. I'm on Page 533.

09:08:56 20 Q. Do you see Lines 15 to 18?

09:09:00 21 A. Yes.

09:09:01 22 Q. Could you read to the ladies and gentlemen of the jury

09:09:04 23 what the question was and what the answer that you gave?

09:09:08 24 A. Prior to this email -- the question: Prior to this

09:09:21 25 email, you had made an offer to Google to sell '756 patent;

09:09:31 1 is that right?

09:09:31 2 And the answer: That's right.

09:09:35 3 Q. So was this an accurate transcription of the exchange

09:09:39 4 you had at your deposition on that date?

09:09:41 5 A. Right.

09:09:42 6 Q. Okay.

09:09:42 7 MR. RE: Let's go to Defendants' Exhibit No. 1.

09:09:52 8 Q. (By Mr. Re) This is the email that you received from
09:10:00 9 Google confirming that it has received your offer to sell
09:10:04 10 the now surrendered '756 patent for \$700,000.00, correct?

09:10:15 11 A. That's right. That email, yeah, Google told us they
09:10:20 12 reject our offer.

09:10:21 13 Q. Yes. And you knew, based on the subject line of the
09:10:26 14 email, that this was part of Google's patent purchase
09:10:31 15 promotion program, correct?

09:10:33 16 A. That's the title.

09:10:36 17 Q. And this is an offer that you made yourself online,
09:10:41 18 right?

09:10:41 19 A. We submitted the proposal online.

09:10:46 20 Q. And you -- you -- you were the person who determined
09:10:49 21 how much to sell the patent for, right?

09:10:52 22 A. Right. We did not contact a patent attorney and expert
09:10:59 23 on the matter.

09:11:00 24 Q. But you were the one authorized in charge of your
09:11:03 25 company who decided on the correct amount that you would

09:11:06 1 offer to sell the now surrendered '756, right?

09:11:13 2 A. Says the proposal.

09:11:14 3 Q. Yes.

09:11:14 4 A. And when we submit the proposal, I thought that we

09:11:17 5 still have the right to negotiate a price later with Google

09:11:23 6 if they accept this proposal.

09:11:26 7 Q. And this was clear to you from this that you were

09:11:30 8 accepting the terms for offering to sell the '756 to Google

09:11:39 9 for \$700,000.00, right?

09:11:45 10 A. It just accept -- I don't know what meaning.

09:11:52 11 Q. Okay.

09:11:52 12 A. There's no language around accept.

09:11:56 13 Q. And you knew --

09:11:57 14 A. That could be Google received it -- our offer, our

09:12:04 15 proposal.

09:12:05 16 Q. And you knew this was the sale of your most important

09:12:10 17 patent, right?

09:12:13 18 A. We have many patents. I don't think that at that time

09:12:21 19 I thought that most important because at that time, Google

09:12:26 20 don't have the far-field application. There was no Google

09:12:30 21 Home.

09:12:30 22 Q. No, I'm referring to all the intellectual property that

09:12:32 23 you held, you considered the now surrendered '756 at the

09:12:38 24 time of this offer your most important patent, right?

09:12:50 25 A. At that time, I don't know which one is more important.

09:12:55 1 We have many patents.

09:12:56 2 Q. I'd like you to go to your deposition, Volume 2,

09:13:02 3 Page 542, Lines 6 through 16. And if you could just read

09:13:08 4 to yourself those Lines 6 through 16.

09:13:21 5 A. You said Line 6 --

09:13:23 6 Q. Through 16?

09:13:24 7 A. -- through 16? Do you want I read, or do you want --

09:13:30 8 Q. No, just read it to yourself.

09:13:35 9 A. Read it to myself.

09:13:37 10 Yes.

09:14:08 11 Q. And were you asked those questions, and did you give

09:14:11 12 that answer?

09:14:12 13 A. Can you repeat?

09:14:18 14 Q. Is the deposition that you just read, is that an

09:14:21 15 accurate transcription of the question and the answer that

09:14:25 16 you gave?

09:14:26 17 A. Right.

09:14:27 18 MR. RE: Mr. Berk, can we call up that page,

09:14:31 19 Page 542, Lines 6 through 16? And I'll read it into the

09:14:38 20 record.

09:14:39 21 Q. (By Mr. Re) Question: And in the exhibit that we are

09:14:41 22 looking at here at 1014 [sic], whatever number that you put

09:14:46 23 in the online form to sell your patent to Google, they

09:14:51 24 rejected it, correct?

09:14:55 25 A. Right.

09:14:57 1 Q. Answer -- answer: We -- I remember -- that's -- that's
09:15:06 2 the -- the patent which we submit, that's the most
09:15:11 3 important patent, I remember. That's -- we submit to
09:15:14 4 Google. We have other patents. I remember we submit this
09:15:17 5 one since we believe that's an important one.

09:15:20 6 Did I read it correctly?

09:15:22 7 A. That's an important one.

09:15:28 8 Q. Did I read it correctly?

09:15:30 9 A. Last sentence says: An important one.

09:15:36 10 Q. Yes.

09:15:36 11 A. And, also, as I said, at that time now the deposition
09:15:44 12 is now at that time, right? Deposition was this year.

09:15:47 13 THE COURT: Just -- just a minute, Dr. Li. You
09:15:52 14 need to answer the question, did he read this correctly or
09:15:55 15 did he not read it correctly, and that should be the
09:15:59 16 totality of your answer.

09:15:59 17 So did he read it correctly, or did he not?

09:16:03 18 THE WITNESS: Yes.

09:16:03 19 THE COURT: Okay. Next question, please.

09:16:05 20 Q. (By Mr. Re) And because you believed it was your most
09:16:08 21 important patent, you asked for a lot of money from Google,
09:16:12 22 right?

09:16:12 23 A. At the deposition time.

09:16:17 24 Q. So because -- I'm talking when you made the offer to
09:16:22 25 Google, you selected a number that you believed was a lot

09:16:26 1 of money because this was your most important patent,
09:16:32 2 right?

09:16:32 3 A. That's what I told you at the deposition time.

09:16:35 4 Q. And that's still true today, right?

09:16:38 5 A. What?

09:16:39 6 Q. The truth didn't change from the time of your
09:16:42 7 deposition and this trial, right?

09:16:47 8 A. It's different. Because at the deposition time, we
09:16:52 9 already saw the products on the market. At the time we
09:16:55 10 submit the proposal, we have not saw product yet.

09:17:04 11 Q. But at the time of the deposition, you explained that
09:17:06 12 the amount of money you asked for from Google was a lot of
09:17:09 13 money, right?

09:17:09 14 A. Yes.

09:17:10 15 Q. And the amount you asked for, that was a lot of money.

09:17:14 16 It was \$700,000.00, right?

09:17:17 17 A. Could you repeat your question?

09:17:19 18 Q. And the amount of money that you thought was a lot of
09:17:22 19 money was \$700,000.00, right?

09:17:26 20 A. Yes.

09:17:27 21 Q. And you understood that if you sell your patent to
09:17:35 22 someone, that sale would give the new owner the right to
09:17:40 23 get any possible reissue, right?

09:17:46 24 A. For that case, we saw that we gave the patent the right
09:17:53 25 to Google, but then we still have the right to use the

09:17:56 1 patent. That was my understanding at that time.

09:18:00 2 Q. But that wasn't my question.

09:18:02 3 My question was: You understood, even though you
09:18:04 4 could still have the ability to practice the patent, the
09:18:08 5 sale of the patent would give Google the authority to
09:18:13 6 decide whether to file for any possible future reissue
09:18:17 7 patent, right?

09:18:19 8 A. I never saw that. I'm not an attorney.

09:18:25 9 Q. So you don't know that when you sell a patent, the new
09:18:27 10 owner would step in the shoes of the seller of the patent?

09:18:32 11 A. We sell the right for Google to use the patent for
09:18:36 12 their product maybe.

09:18:37 13 Q. So you're still maintaining that you only thought you
09:18:41 14 were licensing and not selling the patent?

09:18:44 15 A. I'm not selling the whole patent.

09:18:50 16 Q. Could you repeat that? I don't -- I don't understand
09:18:58 17 that.

09:18:58 18 A. I -- I -- I proposed to sell the right for Google to
09:19:07 19 use the patent, and I -- from my understanding, we still
09:19:18 20 can use the patent.

09:19:19 21 Q. Yeah, but I'm talking about title to the patent. Do
09:19:22 22 you know the difference between having ownership of the
09:19:25 23 patent versus the right to practice the patent? Do you
09:19:28 24 understand the difference?

09:19:29 25 A. I'm not attorney. At that time, I didn't see it that

09:19:35 1 way.

09:19:35 2 Q. And we agree that Google rejected your offer of
09:19:43 3 \$700,000.00 for the patent, right?

09:19:46 4 A. Yes.

09:19:46 5 Q. Okay. Now, the year after you made this Google offer,
09:19:56 6 you realized that your patent -- the '756 patent was
09:19:58 7 invalid, right?

09:19:59 8 A. We have '756 patent at that time.

09:20:04 9 Q. Yet later, in 2016, a year after the Google offer, you
09:20:15 10 realized that the patent was invalid, right?

09:20:16 11 A. Yes.

09:20:16 12 Q. And you realized that it had to be reissued because of
09:20:23 13 the defect of invalidity, right?

09:20:25 14 A. Repeat your question, please.

09:20:27 15 Q. You realized that because the patent -- the '756 was
09:20:32 16 invalid, right -- you realized that, right?

09:20:34 17 A. At which time? After 2017?

09:20:42 18 Q. 2016. In 2016, you realized that the patent that you
09:20:49 19 had, the '756 patent, was invalid, right?

09:20:54 20 A. That's because we file a reissue.

09:20:56 21 Q. Right. And when you file for the reissue, you know to
09:21:00 22 get the reissue, you must surrender the '756 patent, right?

09:21:06 23 A. I'm not an attorney. I don't know the result when we
09:21:11 24 submit the reissue.

09:21:12 25 Q. Are you saying that you did not understand that you had

09:21:17 1 to surrender the '756 to get the '049?

09:21:22 2 A. When we submitted the reissue, I don't know -- I did

09:21:28 3 not know either we can hold it or we have to surrender the

09:21:37 4 '756.

09:21:37 5 Q. Let's look at Volume 3 of your deposition, Page 189,

09:21:42 6 Lines 3 to 13. Do you --

09:21:56 7 A. You say Page 189?

09:21:57 8 Q. Right. Lines 3 --

09:21:59 9 A. Yeah.

09:22:00 10 Q. -- to 13?

09:22:02 11 A. Lines 3 through 13?

09:22:03 12 Q. Yes.

09:22:35 13 Did I ask you those questions, and did you give

09:22:38 14 those answers?

09:22:39 15 A. The question I read from here is, do you agree that you

09:22:53 16 -- that -- Li article. Which article you refer to?

09:22:55 17 Q. My question was: Did I give you these questions, and

09:22:59 18 did you give those answers on Page 189, Lines 3 through 13?

09:23:04 19 A. Yes.

09:23:05 20 Q. Okay.

09:23:09 21 MR. RE: Mr. Berk, we can publish those lines. I

09:23:12 22 will read them into the record.

09:23:14 23 Q. (By Mr. Re) And I was reading -- do you remember I was

09:23:18 24 reading and I -- and I wrote -- and I said to you: And I

09:23:23 25 quote (as read): Dr. Li surrendered the '756 patent to the

09:23:29 1 Patent Office because he believed it to be invalid or
09:23:34 2 inoperable due to an error in the claims.
09:23:40 3 Do you see that statement?
09:23:41 4 Answer: I saw that.
09:23:43 5 Do you agree with that statement?
09:23:46 6 The Witness: Yes.
09:23:49 7 You were the witness, right?
09:24:03 8 A. Yes.
09:24:04 9 Q. So you understand that the '756 patent, the original
09:24:06 10 patent from the '049, it no longer exists and is not being
09:24:10 11 asserted in this case, right?
09:24:11 12 A. Yes.
09:24:11 13 Q. And so you understand that the jury will have no
09:24:15 14 questions whatsoever pertaining to the '756 patent?
09:24:33 15 A. Right.
09:24:33 16 Q. Now, you surrendered the '756 patent in order to get
09:24:35 17 the '049 patent that is at issue in this case, right?
09:24:38 18 A. Right.
09:24:38 19 Q. But you also filed for a second reissue patent,
09:24:43 20 correct?
09:24:43 21 A. Yes.
09:24:44 22 Q. And in July, you filed a declaration with the Patent
09:24:49 23 Office in connection with that second reissue application,
09:24:53 24 right?
09:24:53 25 A. Could you repeat your question?

09:24:58 1 Q. In July of this year, 2020, you filed a declaration
09:25:02 2 with the Patent Office as part of obtaining a second
09:25:10 3 reissue patent, right?

09:25:12 4 A. Yes.

09:25:12 5 Q. And you understand that the reissue process is to
09:25:17 6 correct errors in an earlier patent, right?

09:25:19 7 A. From my understanding, what's wrong with all these
09:25:27 8 patents are reissues.

09:25:33 9 Q. That's not what I --

09:25:35 10 THE COURT: Counsel, if you believe the witness is
09:25:38 11 non-responsive, don't tell him that's not the question I
09:25:42 12 asked you. You raise it with the Court, and the Court will
09:25:45 13 address it.

09:25:46 14 MR. RE: Your Honor, I move to strike as
09:25:49 15 non-responsive.

09:25:49 16 THE WITNESS: You want to repeat your question?

09:25:51 17 THE COURT: Just a minute, Dr. Li.

09:26:01 18 I'll overrule the objection. The answer is
09:26:04 19 responsive.

09:26:07 20 Q. (By Mr. Re) Dr. Li, you understand the purpose of the
09:26:11 21 reissue process is to correct an error in an earlier
09:26:16 22 patent, right?

09:26:18 23 A. You want a yes or no answer? Can I explain that?

09:26:31 24 Q. I --

09:26:32 25 A. We --

09:26:33 1 THE COURT: Just a minute. You need to answer the
09:26:35 2 question that's called for. If it calls for a yes or no
09:26:39 3 answer, then give a yes or no answer. If it calls for an
09:26:43 4 explanation, give an explanation.

09:26:44 5 Is that clear, Dr. Li?

09:26:47 6 THE WITNESS: Yeah, but this question, is it a yes
09:26:50 7 or no answer or is it --

09:26:51 8 THE COURT: The question will determine whether
09:26:52 9 the answer is yes or no, not the subject. You may think
09:26:56 10 there's a greater explanation than the question calls for.

09:27:01 11 But, again, that's why Mr. Fabricant will get a
09:27:04 12 chance to ask for further explanation later if he believes
09:27:08 13 that's appropriate, and the question you're asked now is
09:27:12 14 limited to a yes or no. So answer the question as it's
09:27:18 15 called for.

09:27:18 16 Restate the question, Mr. Re.

09:27:25 17 Q. (By Mr. Re) You understand that the basic purpose of
09:27:27 18 the reissue process is to correct errors in an earlier
09:27:30 19 patent, right?

09:27:31 20 A. Yes.

09:27:33 21 Q. And I want to show you --

09:27:36 22 MR. RE: If I can show exhibits -- Exhibit 980 at
09:27:41 23 Page 124.

09:27:48 24 Q. (By Mr. Re) As part of the second reissue application,
09:27:51 25 is this the declaration that you signed along with your

09:27:58 1 co-inventor, Dr. Manli Zhu?

09:28:00 2 A. Yes.

09:28:02 3 Q. And your signatures are shown on Page 126 of this

09:28:10 4 exhibit, right?

09:28:13 5 A. Yes.

09:28:13 6 Q. And this is dated July 22nd, 2020, correct?

09:28:16 7 A. Yes.

09:28:16 8 Q. And the statements in this declaration are sworn to be

09:28:20 9 true under the penalty of perjury, and, therefore, you

09:28:23 10 believe them to be true and accurate, right?

09:28:25 11 A. Yes.

09:28:29 12 THE COURT: Slow down a little bit, Mr. Re,

09:28:32 13 please.

09:28:32 14 Let's continue.

09:28:33 15 MR. RE: Thank you.

09:28:34 16 Q. (By Mr. Re) And in this declaration, you and Dr. Zhu

09:28:38 17 swore under oath that the claims of the original patent

09:28:41 18 were wholly or partly inoperative or invalid, right?

09:28:47 19 A. That's the box -- we checked one box, and I --

09:28:54 20 Q. I --

09:28:55 21 A. This form was prepared by our attorney.

09:28:58 22 Q. Yes. And your attorney knew which box to check. He

09:29:04 23 checked one box, right?

09:29:06 24 A. He checked one box, but I don't understand why he

09:29:09 25 checked that box.

09:29:10 1 Q. And you, in fact, signed a declaration with that same
09:29:15 2 box checked five times through the course of this reissue,
09:29:20 3 correct?

09:29:20 4 A. Could you repeat your question?

09:29:23 5 Q. Do you remember that you filed a declaration with this
09:29:29 6 one box checked five times between 2018 and July 2020?

09:29:40 7 A. Five box checked -- I don't have that five box in front
09:29:49 8 of me. If you have that, you may be right. But I don't
09:29:53 9 have chance to go back and count how many boxes I checked.

09:29:56 10 Q. No, the box was always the same, but this was done five
09:30:00 11 times through the course of trying to obtain a second
09:30:03 12 reissue. Isn't that right?

09:30:05 13 A. I already answered your question.

09:30:07 14 Q. Okay. And if we could go to the explanation. You have
09:30:18 15 an explanation of what the error is on this declaration,
09:30:23 16 correct.

09:30:23 17 A. Right.

09:30:24 18 Q. And you -- and you attached a sheet explaining what the
09:30:30 19 error was, correct?

09:30:31 20 A. Yes.

09:30:31 21 Q. And this explains that since the sound source
09:30:43 22 localization unit, said adaptive beamforming unit, and said
09:30:47 23 noise reduction unit are already integrated into the
09:30:52 24 digital signal processor, it is wrong -- it is wrong -- are
09:31:01 25 you following along?

09:31:02 1 A. I'm following you.

09:31:05 2 Q. Okay. It continues: It is wrong to recite that the

09:31:10 3 sound source localization unit, the adaptive beamforming

09:31:12 4 unit, and the noise reduction unit are in operative

09:31:16 5 communication with the array of sound sensors.

09:31:22 6 Did I read it correctly?

09:31:23 7 A. You read the sentence, yes.

09:31:24 8 Q. And the next sentence says: Instead -- instead the

09:31:29 9 correct recitation is that the digital signal processor is

09:31:32 10 in operative communication with the array of sound sensors.

09:31:36 11 Do you see that?

09:31:37 12 A. Yes.

09:31:38 13 Q. So there was an error in the claims, right?

09:31:43 14 A. Yes.

09:31:46 15 Q. And those -- those claims were wrong and needed to be

09:31:50 16 corrected, right?

09:31:50 17 A. Nothing wrong with the claim. The wrong is that the

09:32:04 18 '756 claim was not broad enough.

09:32:05 19 Q. Okay. Let's go to the next sentence. The next

09:32:08 20 sentence --

09:32:09 21 MR. RE: If we can just highlight that alone.

09:32:13 22 Q. (By Mr. Re) It states: This error --

09:32:15 23 MR. RE: About Line 6 or so. Do you see that?

09:32:19 24 Q. (By Mr. Re) This error was not corrected in the first

09:32:22 25 reissue patent.

09:32:22 1 Did I read that correctly.

09:32:24 2 A. Could you repeat your question?

09:32:29 3 Q. Did I read that highlighted sentence correctly?

09:32:31 4 A. You read that sentence.

09:32:32 5 Q. Right. And the -- the first reissue patent is, in

09:32:38 6 fact, the '049 patent in this case, right?

09:32:40 7 A. Could you repeat -- could you -- may I ask you to be

09:32:49 8 close to the microphone or turn the microphone to your

09:32:51 9 mouth, please?

09:32:52 10 Q. Okay. The -- the statement is, this error was not

09:32:54 11 corrected in the first reissue patent. Do you see that?

09:32:58 12 A. Yes.

09:32:58 13 Q. And the first reissue patent is the '049 patent at

09:33:04 14 issue in this case, right?

09:33:05 15 A. Right.

09:33:13 16 Q. And we know that the explanation is referring to the

09:33:16 17 '049 patent because that is the only patent specifically

09:33:18 18 mentioning the DSP in the claim, right?

09:33:25 19 A. Right.

09:33:32 20 Q. Because the DSP is not mentioned in any claim of the

09:33:36 21 '756 patent, correct?

09:33:38 22 A. I only remember that may not be in the first claim.

09:33:46 23 Q. Do you believe that the digital signal processor is in

09:33:49 24 any claim of the '756 patent?

09:33:56 25 A. I don't have -- I didn't read that now. I think part

09:34:06 1 was included but not in Claim 1.

09:34:08 2 Q. Okay. Let's -- let's clarify that.

09:34:10 3 MR. RE: If we can call up Plaintiff's Exhibit 1,

09:34:14 4 Claim 1, Mr. Berk. If you could blow up the first part of

09:34:23 5 Claim 1.

09:34:28 6 A. Is this -- is this the '756?

09:34:32 7 Q. (By Mr. Re) Can you tell which patent this claim comes

09:34:36 8 from?

09:34:37 9 A. I don't see that this is the '576 [sic].

09:34:43 10 Q. It is not. It's the reissue, the '049, right?

09:34:46 11 A. Yes, but if --

09:34:48 12 Q. And do you notice that it's the '049 because it has

09:34:51 13 italicized language in it. Do you see that?

09:34:53 14 A. I can recognize this as the '049.

09:34:57 15 Q. Right. And the -- and you see the italics language is

09:35:01 16 the language that was added by way of reissue, correct?

09:35:05 17 A. Right.

09:35:05 18 Q. And the -- and the brackets -- see the "arbitrary"

09:35:11 19 word, the bracket is the removal of language, right?

09:35:14 20 A. You are right.

09:35:15 21 Q. And you see that the '049 added in Claim 1, the claim

09:35:17 22 at issue in this case, the digital signal processor

09:35:22 23 language, correct?

09:35:23 24 A. Right.

09:35:24 25 Q. And you understand that the only other claim asserted

09:35:29 1 in this case is Claim 8, right?

09:35:33 2 A. Could you repeat your question?

09:35:35 3 Q. You understand that the only other claim asserted in

09:35:38 4 this case is Claim 8, right?

09:35:40 5 A. I don't understand your question. Why is Claim 8?

09:35:46 6 Q. Do you know that your company is alleging that my

09:35:51 7 client infringes Claim 8 somehow?

09:35:58 8 A. You infringed the whole patent.

09:36:02 9 Q. Do you know what a dependent claim is?

09:36:06 10 A. Yes.

09:36:12 11 Q. Do you know that Claim 8 depends from Claim 1?

09:36:19 12 A. Sir, I don't have the -- the claims -- the whole claim

09:36:26 13 in front of me.

09:36:29 14 Q. So when you suggested that you merely wanted to broaden

09:36:34 15 the claims, it's actually a little more complicated than

09:36:37 16 that, correct?

09:36:39 17 A. Yes.

09:36:39 18 Q. So the error that you identified to the Patent Office

09:36:45 19 was not merely, I want to claim more subject matter, right?

09:36:55 20 A. Could you repeat your question?

09:36:57 21 Q. So you never told the Patent Office that the purpose of

09:37:02 22 your second reissue was merely to claim additional subject

09:37:07 23 matter?

09:37:25 24 A. Difficult for me to understand the meaning of your

09:37:31 25 question.

09:37:31 1 Q. So you never checked the box in any declaration --
09:37:38 2 checking the box telling the Patent Office that you merely
09:37:42 3 wanted to broaden the claims?
09:37:44 4 A. We didn't check that box. Our attorney did not check
09:37:47 5 that box.
09:37:49 6 Q. So you just simply relied on your attorney for filling
09:37:52 7 out this paperwork; is that what you're saying?
09:37:55 8 A. I'm not an attorney.
09:38:02 9 Q. And so looking at the explanation that you gave, since
09:38:06 10 it's discussing the digital signal processor, your
09:38:09 11 statement that the patent is "inoperative" or "invalid"
09:38:14 12 could only apply to the '049 patent, correct?
09:38:16 13 A. I think the second reissue is based on the '756.
09:38:24 14 Q. But the '756 doesn't mention the digital signal
09:38:29 15 processor in Claim 1, as you're amending here, correct?
09:38:32 16 A. It doesn't matter what you say. The second reissue is
09:38:38 17 from '756.
09:38:41 18 Q. That's what you told the Patent Office when you
09:38:45 19 applied. But your explanation is referring to the first
09:38:49 20 reissue patent, correct?
09:38:57 21 A. Could you point out where is the language?
09:38:59 22 Q. This error was -- see where it begins "this error" --
09:39:07 23 this error was not corrected --
09:39:08 24 A. Could you highlight so the jury could read that?
09:39:12 25 Q. If we go below --

09:39:14 1 THE COURT: Just a minute.

09:39:15 2 Dr. Li, you don't need to be concerned about

09:39:17 3 whether the jury can read it or not. That's the lawyer's

09:39:20 4 job.

09:39:21 5 THE WITNESS: Okay.

09:39:21 6 THE COURT: Don't ask him to highlight things for

09:39:23 7 the jury, okay?

09:39:24 8 THE WITNESS: Thank you.

09:39:25 9 THE COURT: Let's proceed.

09:39:26 10 Q. (By Mr. Re) I have done as you requested, and the

09:39:31 11 language is: This error was not corrected in the first

09:39:34 12 reissue patent.

09:39:35 13 Isn't that statement referring to the '049 and not

09:39:37 14 the '756?

09:39:37 15 A. The sentence refer to the first reissue. But the

09:39:47 16 second reissue is based on '756.

09:39:52 17 Q. Okay. Let's move on.

09:40:04 18 MR. RE: Let's call up Plaintiff's Exhibit 8.

09:40:08 19 Q. (By Mr. Re) Dr. Li, you recognize this exhibit as your

09:40:14 20 provisional application filed September 24th, 2010, right?

09:40:19 21 A. Yes.

09:40:21 22 Q. And this ultimately led to the surrendered '756 patent,

09:40:25 23 right?

09:40:25 24 A. Right.

09:40:27 25 Q. And that led to the '049 at issue in this case, right?

09:40:31 1 A. '049 is based on '756.

09:40:40 2 Q. Right. And you wrote this original provisional

09:40:43 3 application, right?

09:40:45 4 A. Prepared by our attorney.

09:40:47 5 Q. And you reviewed it though, right?

09:40:49 6 A. Oh, yeah.

09:40:50 7 Q. And you approved it and signed it, right?

09:40:52 8 A. The provisional? Yes.

09:40:55 9 Q. And approved the filing of it, right?

09:40:56 10 A. Yeah.

09:40:57 11 Q. And at the end of this application for a patent on

09:41:03 12 Page 29, you lists several earlier articles and books,

09:41:10 13 correct?

09:41:10 14 A. Yes.

09:41:10 15 Q. And the second one you list in this provisional

09:41:14 16 application is the book we've been discussing yesterday at

09:41:19 17 length, Brandstein and Ward, Microphone Arrays, published

09:41:25 18 by Springer in 2001, correct?

09:41:29 19 A. Yes.

09:41:30 20 Q. In fact, you relied on this book to write portions of

09:41:34 21 your patent application, right?

09:41:35 22 A. That's just a reference, not means to rely on.

09:41:40 23 Q. Do you recall taking any subject matter from Brandstein

09:41:45 24 to write this application?

09:41:50 25 A. Our application is based on our invention, not based on

09:41:53 1 the book.

09:41:57 2 MR. RE: Your Honor, I'd like to move to strike as
09:41:59 3 non-responsive.

09:42:04 4 THE COURT: Sustained.

09:42:06 5 Q. (By Mr. Re) Do you recall taking any of the words from
09:42:12 6 Brandstein and putting them in your provisional
09:42:15 7 application?

09:42:21 8 A. Some of the word in my application could be -- you can
09:42:27 9 find that same word from that book or from other books.

09:42:31 10 Q. Correct. And let's look at some of those.

09:42:34 11 Do you see --

09:42:35 12 MR. RE: Let's call up DTX-49, 189, Mr. Berk.

09:42:40 13 Q. (By Mr. Re) Do you see -- do you see on this page
09:43:01 14 where Dr. Brandstein states: When the focus corresponds to
09:43:05 15 the location of the sound sensors [sic], the SRP should
09:43:12 16 reach a global maximum.

09:43:14 17 Do you see that?

09:43:14 18 A. Yes.

09:43:14 19 Q. And let's take a look now at your patent application at
09:43:18 20 136903 where it says: When the focus corresponds to the
09:43:23 21 location of the sound source, the steered response power,
09:43:30 22 SRP, should reach a global maximum.

09:43:33 23 A. Yes.

09:43:34 24 Q. It's pretty clear that you knew about the content in
09:43:39 25 some parts of Brandstein when writing your application,

09:43:42 1 right?

09:43:42 2 A. Right.

09:43:50 3 Q. And this is just one example that I could pull to show
09:43:53 4 that you did have Brandstein open when you were writing
09:43:58 5 your patent application, right?

09:43:59 6 A. Could you repeat your question?

09:44:04 7 Q. This is just one example of many where you -- it is
09:44:09 8 clear that you had the Brandstein book open when you were
09:44:13 9 writing your patent application, right?

09:44:15 10 A. No. We didn't open the book when I write our patent
09:44:22 11 application.

09:44:22 12 Q. So the language is merely a coincidence when it's
09:44:26 13 similar to Brandstein?

09:44:27 14 A. When we wrote our patent application, we have the
09:44:33 15 knowledge.

09:44:34 16 Q. But you also had the knowledge of Brandstein, correct?

09:44:39 17 A. Knowledge of what?

09:44:42 18 Q. You also had the knowledge of the Brandstein book
09:44:46 19 entitled Microphone Arrays?

09:44:53 20 A. The knowledge is not just from this book. The same
09:44:56 21 term you can find out from other books or papers, as well.

09:45:00 22 Q. Let's look at another example to clear this up.

09:45:04 23 MR. RE: Let's go to DTX-49 at 183.

09:45:08 24 Q. (By Mr. Re) Do you see where Brandstein states: The
09:45:10 25 delay-and-sum SRP approach requires shorter analysis

09:45:17 1 intervals and exhibits an elevated insensitivity to
09:45:22 2 environmental conditions, though again, not to a degree
09:45:25 3 that allows for their use under excessive multi-path.

09:45:29 4 Did I read that correctly?

09:45:31 5 A. Yes.

09:45:31 6 Q. Now, let's look at your provisional application at that
09:45:34 7 Page 136903 from the production, Page 7.

09:45:39 8 It states: The SRP approach requires shorter
09:45:43 9 analysis intervals and exhibits an elevated insensitivity
09:45:48 10 to environmental condition while not allowing for use under
09:45:52 11 excessive multi-path.

09:45:55 12 Right?

09:45:56 13 A. Right.

09:45:57 14 Q. Does this make it a little more clear to you that the
09:46:00 15 author of this patent application did, in fact, open and
09:46:05 16 use the Brandstein book when the application was written?

09:46:07 17 A. Yes.

09:46:09 18 Q. And I could show you additional examples, but for the
09:46:14 19 sake of time, you can see that the author of the
09:46:17 20 application had the Brandstein book, right?

09:46:19 21 A. You haven't shown me yet.

09:46:26 22 Q. Let's move on.

09:46:27 23 Now, you knew from the launch, that Echo launched
09:46:33 24 in 2014, right?

09:46:36 25 A. Yes.

09:46:36 1 Q. And the Dot, that was released and public by 2016, at
09:46:42 2 least, right?

09:46:43 3 A. Could you repeat?

09:46:47 4 Q. The Dot, the Echo Dot -- you knew about the Echo Dot?

09:46:52 5 A. Right.

09:46:52 6 Q. The Echo Dot is -- looks like a dot?

09:46:55 7 A. Yes.

09:46:56 8 Q. And you knew this had been launched at about 2016,
09:46:59 9 right?

09:46:59 10 A. I don't remember exactly when that product launched.

09:47:04 11 Q. Okay. But this launched before you started selling
09:47:08 12 your CrispMic II, right?

09:47:13 13 A. Right.

09:47:14 14 Q. Right. And when you were designing the CrispMic II, I
09:47:18 15 believe -- is this -- Plaintiff's Exhibit 644, is this the
09:47:21 16 CrispMic II?

09:47:22 17 A. Yes.

09:47:23 18 Q. And when you designed the CrispMic II, you designed it
09:47:28 19 to mimic the Amazon Echo Dot, no?

09:47:32 20 A. What's this limit?

09:47:39 21 Q. You -- you used the Amazon Echo as a reference product
09:47:44 22 and designed your CrispMic II to look like it, right?

09:47:53 23 A. No.

09:47:54 24 Q. Let's take a look at a demonstrative exhibit.
09:47:57 25 These are slides from your design process, right?

09:48:01 1 MR. RE: If we can call up --

09:48:03 2 Q. (By Mr. Re) Do you recognize this document?

09:48:04 3 A. Yes.

09:48:09 4 Q. And this is from June 5, 2017, right?

09:48:17 5 A. This part covered -- okay.

09:48:23 6 MR. RE: In the lower right corner, Mr. Berk.

09:48:27 7 A. Right, that's right.

09:48:29 8 Q. (By Mr. Re) Do you recognize the document?

09:48:30 9 A. Yes.

09:48:31 10 Q. Okay. It's from you, right, this document, your

09:48:33 11 company?

09:48:34 12 A. Yes.

09:48:34 13 Q. And Page 3 of this document shows that you wanted the

09:48:40 14 CrispMic II -- what you wanted it to look like, right?

09:48:46 15 A. Yeah.

09:48:47 16 Q. That's this, right?

09:48:48 17 A. Right.

09:48:49 18 Q. This -- this is a concept of what later became this,

09:48:53 19 right?

09:48:53 20 A. Yes.

09:48:55 21 Q. And you wanted this to look like the Amazon Echo Dot,

09:49:01 22 right?

09:49:01 23 A. No.

09:49:04 24 MR. RE: Let's take a look at Page 5.

09:49:06 25 Q. (By Mr. Re) Do you see on Page 5 that you were using

09:49:10 1 the Amazon Echo Dot as a reference? Do you see that?

09:49:15 2 A. Right.

09:49:15 3 Q. And, therefore, you at least wanted your CrispMic II to

09:49:22 4 be similar to other circular microphone array devices like

09:49:29 5 the Echo Dot, right?

09:49:35 6 A. The shape is similar because we both need to use a

09:49:41 7 circular microphone array.

09:49:42 8 Q. Correct. And --

09:49:44 9 A. And this document probably is prepared for our

09:49:50 10 industrial engineer to design the enclosure. And that

09:49:55 11 invention, the Amazon Echo, as a reference, that's not --

09:49:59 12 does that mean we want to copy the design.

09:50:02 13 Q. Right. But you had other similar designs on the market

09:50:07 14 as part of this report, right?

09:50:10 15 A. It looks similar.

09:50:17 16 Q. And you were aware of all the other circular-type

09:50:24 17 microphone circular array products like the Dot at the time

09:50:28 18 of this design proposal, right?

09:50:30 19 A. Okay. You want to talk about the -- the examples on

09:50:36 20 this page?

09:50:37 21 Q. You were aware of all of these designs that were

09:50:40 22 already on the market when you were conceptualizing

09:50:45 23 Plaintiff's Exhibit 644, right?

09:50:49 24 A. Yes, but --

09:50:51 25 Q. And you -- you did not begin selling the CrispMic II

09:50:55 1 device or developer board until November 2018, right?

09:51:03 2 A. Right.

09:51:04 3 Q. So isn't it unfair to suggest in any way that Amazon

09:51:10 4 somehow copied this product, 644, right?

09:51:20 5 A. Mr. Re, Amazon -- we talk about infringe our patent,

09:51:30 6 not the design, right?

09:51:32 7 Q. But Mr. Fabricant and you have raised this Plaintiff's

09:51:36 8 Exhibit 644 in this trial, right?

09:51:39 9 A. That's our -- the design of the enclosure.

09:51:42 10 Q. Correct. And the CrispMic II product developer board

09:51:46 11 is inside?

09:51:47 12 A. Right.

09:51:48 13 Q. Right. And this product by Amazon was out for years

09:51:52 14 before this product, right?

09:51:54 15 A. Right.

09:51:57 16 Q. So doesn't the evidence suggest that if anyone is doing

09:52:00 17 any copying, it could not be Amazon copying you, correct?

09:52:07 18 A. We're not talking about the enclosure. The patent is

09:52:11 19 about the technology, right?

09:52:17 20 Q. But you --

09:52:18 21 A. By the way, we have a patent on the enclosure design,

09:52:26 22 as well.

09:52:26 23 Q. But there's no doubt that this product could not be

09:52:31 24 copying the attributes of the shape or design or circular

09:52:35 25 array of this product that you did not introduce until

09:52:40 1 November of 2018, right?

09:52:41 2 A. You mentioned the shape, right.

09:52:45 3 MR. RE: Your Honor, I have no further questions.

09:52:47 4 I would just like to mark the board as exhibit --

09:52:51 5 Demonstrative Exhibit 2A.

09:52:54 6 THE COURT: Duly noted. That's fine.

09:52:57 7 Unless Mr. Fabricant is going to use that in

09:53:00 8 redirect, that board needs to come down.

09:53:03 9 MR. FABRICANT: I'm not -- I'm not intending to.

09:53:04 10 THE COURT: Then you need to take it down, Mr. Re.

09:53:06 11 MR. FABRICANT: Well, actually I changed my mind,

09:53:09 12 Your Honor. Could we leave it up for my redirect?

09:53:10 13 THE COURT: Based on your change of mind, we'll

09:53:13 14 leave it up.

09:53:14 15 Let's proceed -- let's proceed with redirect,

09:53:16 16 Mr. Fabricant.

09:53:16 17 MR. FABRICANT: Yes, Your Honor.

09:53:36 18 If we could bring up Plaintiff's Exhibit 1,

09:53:48 19 please. If we could go to the claims in Plaintiff's

09:53:49 20 Exhibit 1.

09:53:49 21 REDIRECT EXAMINATION

09:53:50 22 BY MR. FABRICANT:

09:53:50 23 Q. This is your patent, is it not, the '049 patent,

09:53:52 24 Dr. Li?

09:53:53 25 A. Yes.

09:53:53 1 MR. FABRICANT: If we could look at Claim 1 at the
09:53:56 2 back of the '049 patent, and highlight the entire claim,
09:53:59 3 please.

09:53:59 4 Q. (By Mr. Fabricant) Dr. Li, while we have the board up,
09:54:06 5 before I ask for permission to take the board down --

09:54:09 6 A. Right.

09:54:09 7 Q. -- I'd like to just ask you some questions.

09:54:12 8 Mr. Re created this board, and he wrote some
09:54:16 9 information on it. And then he wrote "known" next to the
09:54:19 10 various items. Can you see the board from where you're
09:54:23 11 sitting?

09:54:23 12 A. Yes.

09:54:23 13 Q. So he started with the microphone array, linear or
09:54:27 14 circular. And the questions to you were: Did you invent
09:54:34 15 the microphone array --

09:54:34 16 A. No.

09:54:35 17 Q. -- linear and circular?

09:54:37 18 And what -- and you -- you said you did not -- you
09:54:39 19 didn't invent the microphone, correct?

09:54:42 20 A. Right.

09:54:42 21 Q. And he wrote "known," so that's known?

09:54:46 22 A. Right.

09:54:46 23 Q. In the '049 patent, Claim 1, which is at issue in this
09:54:53 24 lawsuit, do you claim ownership of a microphone array? Is
09:54:55 25 that what this patent is about?

09:54:57 1 A. No -- oh, I claimed -- the -- Claim 1 says the -- the
09:55:06 2 whole thing is -- is our invention.
09:55:08 3 Q. So my question -- let's take them one at a time. Do
09:55:11 4 you claim that you own the microphone?
09:55:14 5 A. No.
09:55:14 6 Q. The second item is noise reduction. Your Claim 1 --
09:55:19 7 within Claim 1, which has many, many words, we see all the
09:55:23 8 words here on the page. Do you claim that you invented
09:55:26 9 noise reduction?
09:55:26 10 A. No.
09:55:29 11 Q. That was known, right?
09:55:30 12 A. Correct.
09:55:31 13 Q. Do you claim you created and invented echo cancellation
09:55:37 14 as a concept?
09:55:40 15 A. No.
09:55:40 16 Q. Do you claim that you created the concept of sound
09:55:46 17 source localization, the only one in the world who ever
09:55:49 18 knew about that?
09:55:49 19 A. No.
09:55:49 20 Q. Do you claim that that invented adaptive beamforming,
09:55:54 21 nobody's ever heard of it before, do you claim that?
09:55:57 22 A. No.
09:55:57 23 Q. And in your patent, do you claim any one of these
09:55:59 24 individual components as something that you claim you own?
09:56:02 25 A. No.

09:56:05 1 Q. Well, Dr. Li, what do you claim you own in -- in the
09:56:09 2 '049 patent?

09:56:09 3 A. We own the invention, including all these technology
09:56:15 4 components. We put them together to be a system, to be a
09:56:20 5 product, to be our invention.

09:56:22 6 Q. Separate and apart from them all being together,
09:56:26 7 working together on a single digital processor --

09:56:36 8 A. Right.

09:56:37 9 Q. -- do you own anything? Unless they're all combined
09:56:37 10 together working in the way you've claimed, do you own
09:56:38 11 anything?

09:56:38 12 A. We own the whole thing combined together -- included
09:56:42 13 together.

09:56:42 14 MR. FABRICANT: May I take the board down,
09:56:44 15 Your Honor?

09:56:44 16 THE COURT: You may.

09:57:14 17 Q. (By Mr. Fabricant) Now, yesterday you were asked a
09:57:16 18 series of questions about old patent applications that you
09:57:18 19 filed. Do you recall that you were asked that series of
09:57:25 20 questions, Dr. Li?

09:57:25 21 A. Correct.

09:57:26 22 MR. FABRICANT: So, first, if you could bring up
09:57:28 23 the 954 -- Defendants' 954.

09:57:44 24 Q. (By Mr. Fabricant) Now, you were asked questions --

09:57:46 25 MR. FABRICANT: If we could go to --

09:57:48 1 Q. (By Mr. Fabricant) Well, first, we'll look at the
09:57:50 2 first page. What is the title of this patent application
09:57:53 3 that you submitted to the United States Patent Office?
09:57:56 4 A. It says: Voice-Operated Remote Control for TV and
09:58:02 5 Electronic Systems.

09:58:04 6 MR. FABRICANT: And now if we could go to Claim 1
09:58:07 7 of this patent application.

09:58:08 8 Q. (By Mr. Fabricant) You were asked a series of
09:58:16 9 questions about this patent application and ultimately
09:58:22 10 asked whether this application was rejected over the prior
09:58:25 11 art. Do you remember those questions?

09:58:27 12 A. Right.

09:58:27 13 Q. And Mr. Re asked you if it, in fact, was rejected, and
09:58:32 14 you said yes?

09:58:33 15 A. Correct.

09:58:33 16 Q. Now, this -- here's the claim, Claim 1 of this patent,
09:58:37 17 which sets forth what you were trying to get from the
09:58:39 18 Patent Office as ownership, correct?

09:58:42 19 A. Right.

09:58:42 20 Q. What does a handheld battery-powered wireless remote
09:58:47 21 control have to do with a microphone array in the '049
09:58:51 22 patent, Dr. Li?

09:58:55 23 A. Nothing.

09:58:56 24 Q. Absolutely nothing?

09:58:58 25 A. Absolutely nothing.

09:59:06 1 MR. FABRICANT: Let's go to 957, Defendants' 957.

09:59:12 2 Q. (By Mr. Fabricant) This, Mr. Re showed you and asked
09:59:18 3 you, isn't it true that the Patent Office rejected your
09:59:22 4 patent application that we just saw over prior art? And
09:59:24 5 you admitted that it was true, correct?

09:59:28 6 A. Right.

09:59:28 7 Q. Is this the voice-operated remote control for TV and
09:59:33 8 electronic systems patent that we're talking about here in
09:59:37 9 this Defendants' exhibit?

09:59:39 10 A. Yes.

09:59:39 11 Q. What does this have to do with the '049 patent for a
09:59:42 12 microphone array? Can you please tell the Court?

09:59:47 13 A. Nothing.

10:00:10 14 MR. FABRICANT: Let's go to Defendants'
10:00:12 15 Exhibit 059 -- 959, I'm sorry, I apologize. Scroll down,
10:00:26 16 please.

10:00:26 17 Q. (By Mr. Fabricant) This is -- Mr. Re showed you a
10:00:36 18 Notice of Abandonment, and he asked you whether after
10:00:40 19 rejection of your application back in 2007 you abandoned
10:00:45 20 the application, you abandoned it, you gave it up. Is that
10:00:49 21 true?

10:00:49 22 A. Right.

10:00:50 23 Q. And this is an abandonment of an application that had
10:00:53 24 absolutely nothing to do with microphone arrays; isn't that
10:00:53 25 right?

10:00:56 1 A. That's right.

10:00:58 2 MR. RE: Leading. Your Honor, objection;

10:01:00 3 leading.

10:01:01 4 THE COURT: Sustained as to leading.

10:01:02 5 Q. (By Mr. Fabricant) What, Dr. Li, did this abandonment

10:01:05 6 of this particular application, set forth in the 959

10:01:10 7 Defendants' exhibit, have to do with microphone array '049

10:01:14 8 patent?

10:01:14 9 A. No.

10:01:14 10 Q. You were asked some questions about this Brandstein

10:01:47 11 book, that textbook?

10:01:50 12 A. Right.

10:01:51 13 Q. Do you recall those questions?

10:01:52 14 A. Yes.

10:01:52 15 Q. And a few minutes ago, you were asked some questions

10:01:55 16 about your provisional patent application that you filed --

10:02:00 17 A. Correct.

10:02:01 18 Q. -- in this case in connection with the '049, correct?

10:02:07 19 A. Right.

10:02:12 20 MR. FABRICANT: If we could bring up Plaintiff's

10:02:14 21 Exhibit 8, please. And if we could go to Page 23.

10:02:21 22 Q. (By Mr. Fabricant) Now, you submitted this exhibit,

10:02:29 23 Plaintiff's 8. This was your application to the United

10:02:32 24 States Patent Office in September of 2010; is that correct?

10:02:38 25 A. That's right.

10:02:39 1 Q. And Mr. Re pointed you to Footnote 2 where it says
10:02:46 2 Brandstein and Ward. That's the book; is that right?
10:02:48 3 A. Right.
10:02:48 4 Q. Did I understand your testimony that you submitted this
10:02:53 5 application and told the United States Patent Office that
10:02:56 6 one of your reference materials was the Brandstein book?
10:02:59 7 A. Right.
10:03:01 8 Q. Ultimately, was the '756 patent issued on this
10:03:05 9 provisional application?
10:03:07 10 A. Right.
10:03:07 11 Q. And what happened to the '049 patent? Is that also
10:03:12 12 related to the provisional application?
10:03:14 13 A. Yes.
10:03:15 14 Q. What is the Brandstein textbook? Can you explain that?
10:03:21 15 A. Could you repeat your question?
10:03:23 16 Q. Yes, sir. What -- what is the Brandstein textbook?
10:03:28 17 A. The textbook just talk each individual technical
10:03:33 18 components.
10:03:36 19 Q. And what does that textbook contain with respect to
10:03:45 20 teaching all of the elements of your '049 claim combined
10:03:51 21 together and presented on a signal processor, what does it
10:03:57 22 teach?
10:03:58 23 A. They didn't teach that.
10:04:33 24 Q. You were asked questions today about having visited a
10:04:36 25 number of companies -- names of companies we've heard of

10:04:39 1 like Samsung and Volkswagen and Moen. Do you remember that
10:04:41 2 line of questioning, sir?

10:04:43 3 A. Yes.

10:04:43 4 Q. When you went to companies like Moen and American
10:04:50 5 Standard and other companies that Mr. Re mentioned, he
10:04:53 6 asked you if you had visited those companies, and you said
10:04:57 7 yes.

10:04:58 8 A. Uh-huh.

10:05:00 9 Q. But I believe you tried to say some additional
10:05:02 10 explanation about what the visit was for?

10:05:04 11 A. Right.

10:05:04 12 Q. Did you have something else you wanted to add about why
10:05:07 13 did you visit these companies?

10:05:08 14 A. These companies, they are interested in our technology
10:05:15 15 and also our products. And some of these companies, they
10:05:20 16 purchased product from us, and also some of them sign a
10:05:28 17 contract with us.

10:05:29 18 So the proposal -- which these companies -- they
10:05:33 19 are not about licensing. Some of the company want to use
10:05:37 20 our product and some others want to have a collaboration.
10:05:43 21 They want us to develop product for them. They pay us to
10:05:47 22 do that.

10:05:48 23 Q. At the time that you met with Amazon in New York City
10:06:01 24 in 2014 -- November of 2014, was the '756 patent a
10:06:08 25 surrendered patent at that time?

10:06:11 1 A. No. The patent was just issued.

10:06:14 2 Q. With respect to the subject of reissued patents, I

10:06:25 3 believe you testified today that when you submitted the

10:06:28 4 '049 reissue application, the '756 was surrendered in light

10:06:33 5 of the reissue of the '049. Was that your understanding?

10:06:38 6 A. Right.

10:06:38 7 Q. Now, this second reissue, in 2020, where Mr. Re showed

10:06:45 8 you the box and the checkmark, when you filed the second

10:06:49 9 reissue, was the '049 patent surrendered back to the United

10:06:56 10 States Patent Office?

10:06:57 11 A. No.

10:06:57 12 Q. What's the status of that patent today?

10:07:00 13 A. Still active.

10:07:01 14 Q. Well, why didn't you have to surrender that back to the

10:07:06 15 Patent Office like you had had to surrender the '756? Why?

10:07:11 16 A. I think that's based on the request of the Patent

10:07:22 17 Office.

10:07:22 18 Q. So you don't -- you did not surrender the '049?

10:07:25 19 A. No.

10:07:26 20 Q. The second reissue was a reissue of the '756?

10:07:32 21 A. That's right.

10:07:32 22 Q. On the subject of the questions you were asked

10:07:38 23 regarding the Google proposal, do you recall questions on

10:07:41 24 that?

10:07:42 25 A. Right.

10:07:42 1 Q. And I want to make sure you understand my question very
10:07:52 2 clearly.

10:07:53 3 Did you ever propose to offer to license, to sell
10:07:57 4 the '049 patent to Google? '049 patent?

10:08:06 5 A. No.

10:08:07 6 Q. Did the '049 patent even exist in 2015 when you made
10:08:13 7 your proposal to Google about the '756?

10:08:16 8 A. No.

10:08:17 9 Q. Had you even filed a patent application yet for the
10:08:22 10 '049 patent in 2015 when you made your proposal to Google?

10:08:27 11 A. No.

10:08:29 12 Q. Do you have any written terms from Google about if you
10:08:34 13 did a deal with Google and they paid you \$700,000.00, as to
10:08:39 14 what the terms of that deal would have been? Do you have
10:08:42 15 such a document?

10:08:43 16 A. No, I did not see any terms.

10:08:45 17 Q. Do you have a contract or a proposed contract with
10:08:48 18 Google that says, we get all the rights, we own it, we get
10:08:53 19 to file reissue applications? Do you have that contract?

10:08:57 20 A. No.

10:09:00 21 Q. So what are the terms of the Google proposal you made?

10:09:04 22 A. I don't have the term at that time.

10:09:07 23 Q. You expected to negotiate those terms, sir?

10:09:10 24 A. Yes. As I said, I think we submit a proposal to
10:09:18 25 Google, and if they sign a proposal, then they come back so

10:09:24 1 we can start the negotiation.

10:09:25 2 Q. I just want to know, there seemed in response to your
10:09:35 3 questions to Mr. Re some confusion in your mind as to the
10:09:39 4 difference between a license and a sale and the rights to
10:09:42 5 use.

10:09:43 6 Do you have a legal understanding as to the
10:09:45 7 difference between a sale, a license back, a license; do
10:09:48 8 you understand those concepts, sir?

10:09:49 9 A. As I said several times, I'm not an attorney. I don't
10:09:55 10 have a clear definition of these terms and the differences.
10:10:00 11 And also English is not my first language. And sometimes,
10:10:07 12 you know, I use the word may not be very precisely.

10:10:15 13 Q. When -- when you did have your proposal to Google back
10:10:17 14 in 2015, at that moment in time, to your understanding, did
10:10:21 15 Google have any product whatsoever that used -- that would
10:10:25 16 have used your technology?

10:10:26 17 A. No.

10:10:26 18 Q. At that moment in time in 2015, and we're talking -- I
10:10:33 19 believe it was like May/June of 2015 from the documents --
10:10:39 20 did Amazon even have a successful product that used your
10:10:43 21 technology in the spring of 2015?

10:10:45 22 A. 2015, I think at that time Amazon has the Echo.

10:10:51 23 Q. Right. When did Echo launch, sir?

10:10:52 24 A. 2014.

10:10:55 25 Q. You went to the launch party on November 20, 2014,

10:11:01 1 correct?

10:11:01 2 A. Right.

10:11:01 3 Q. So your proposal to Google was just a few months after

10:11:06 4 they launched their product, their only product, correct,

10:11:09 5 Amazon?

10:11:09 6 A. Amazon, right. Yes.

10:11:11 7 Q. So when you made your proposal to Google, you didn't

10:11:14 8 know that Amazon was going to be this hugely successful

10:11:19 9 Echo line of products, did you?

10:11:21 10 A. Right.

10:11:22 11 Q. Now, Google, I believe you just testified, had no

10:11:24 12 products that used this technology, correct?

10:11:26 13 A. At that time, no.

10:11:27 14 Q. And so you were offering them to use your -- your --

10:11:30 15 your technology for \$700,000.00, correct?

10:11:33 16 A. Right.

10:11:33 17 Q. But Amazon today -- you were here for the openings --

10:11:39 18 they've sold, since the date this complaint was filed,

10:11:42 19 19 million units, correct?

10:11:45 20 A. Right. Right.

10:11:52 21 Q. That's a little different than offering rights to a

10:11:55 22 company that sold nothing, isn't it, sir?

10:11:58 23 A. Right.

10:11:58 24 Q. You were asked questions with respect to the subject of

10:12:13 25 that second reissue.

10:12:15 1 A. Uh-huh.

10:12:16 2 Q. And you were shown the words that that document states

10:12:20 3 where it says that the original patent claims are partly --

10:12:27 4 wholly or partly inoperative or invalid. Do you remember

10:12:31 5 that?

10:12:33 6 A. That's right. I remember that's the standard form.

10:12:37 7 Q. Does every reissue form printed say those words: To

10:12:41 8 submit this application, you have to say that the claims of

10:12:48 9 the original patent are wholly or partly inoperative or

10:12:53 10 invalid?

10:12:54 11 A. I think so.

10:12:55 12 Q. Did you type those words?

10:12:56 13 A. I didn't type that.

10:12:57 14 Q. What does wholly or partly inoperative mean to you when

10:13:01 15 you submit an application of reissue? What does it mean?

10:13:05 16 A. To me, that means when we submit the reissue, for us,

10:13:11 17 we just make -- we want to make the claim broader.

10:13:15 18 Q. And the documents which Mr. Re showed you when he

10:13:23 19 showed them to you several times, they actually expressly

10:13:26 20 say that this is a broadening reissue, do they not?

10:13:30 21 A. Yeah.

10:13:31 22 MR. FABRICANT: Can we please bring up Defendants'

10:13:43 23 Exhibit 980A? If we could go to what they've got marked

10:13:58 24 DTX-980.124.

10:14:02 25 Q. (By Mr. Fabricant) So let's look at --

10:14:10 1 MR. FABRICANT: If you could highlight the --
10:14:12 2 the -- from the check box down to the bottom of the
10:14:16 3 paragraph there.

10:14:19 4 Q. (By Mr. Fabricant) So, first, I believe you testified
10:14:21 5 your attorney checked the box "by reason of other errors."
10:14:27 6 Is that your testimony?

10:14:28 7 A. Right.

10:14:29 8 Q. And then this paragraph sets forth the explanation. Is
10:14:33 9 that your understanding?

10:14:34 10 A. Yes.

10:14:34 11 Q. And it states in Claim 1 of the parent application:
10:14:41 12 U.S. 8,861,756 is broadened as explained in the attached
10:14:48 13 sheet.

10:14:48 14 Is that what it says?

10:14:50 15 A. Yes.

10:14:50 16 Q. Does it say that the '049 patent is broadened in any
10:14:52 17 respect?

10:14:53 18 A. Could you repeat?

10:14:55 19 Q. Does this application to the United States Patent
10:14:59 20 Office say that the '049 patent is being broadened in any
10:15:04 21 respect?

10:15:05 22 A. No.

10:15:08 23 MR. FABRICANT: I have nothing further for the
10:15:10 24 witness, Your Honor.

10:15:12 25 THE COURT: You pass the witness, counsel?

10:15:15 1 MR. FABRICANT: Yes.

10:15:15 2 THE COURT: You have redirect?

10:15:20 3 MR. RE: No more. Thank you, Your Honor.

10:15:22 4 THE COURT: All right. No additional cross from

10:15:26 5 the Defendant, then, Dr. Li, you may step down, sir.

10:15:28 6 THE WITNESS: Thank you, Your Honor.

10:15:28 7 THE COURT: Ladies and gentlemen, we're going to

10:15:30 8 use this opportunity to take a short recess.

10:15:32 9 If you will simply close and leave your notebooks

10:15:35 10 in your chairs. Follow all the instructions I've given you

10:15:37 11 about your conduct during the trial, including, of course,

10:15:37 12 not to discuss the case among yourselves. And we'll be

10:15:40 13 back in here shortly to continue with the next Plaintiff's

10:15:43 14 witness.

10:15:43 15 The jury's excused for recess.

10:15:49 16 COURT SECURITY OFFICER: All rise.

10:15:50 17 (Recess.)

10:34:44 18 (Jury out.)

10:34:44 19 COURT SECURITY OFFICER: All rise.

10:34:46 20 THE COURT: Be seated, please.

10:34:51 21 Mr. Fabricant, is the Plaintiff prepared to call

10:34:52 22 its next witness?

10:34:53 23 MR. FABRICANT: Yes, Your Honor. We intend to at

10:34:56 24 this point play several of the video depositions between

10:34:59 25 now and the lunch hour.

10:35:00 1 THE COURT: All right. As typical in this court,
10:35:05 2 you're certainly free to announce the witness and identify
10:35:08 3 who they are and their position, and then we'll proceed
10:35:11 4 with the deposition.

10:35:11 5 MR. FABRICANT: Thank you, Your Honor.

10:35:12 6 THE COURT: All right. Let's bring in the jury,
10:35:22 7 please.

10:35:22 8 COURT SECURITY OFFICER: All rise.

10:35:23 9 (Jury in.)

10:35:34 10 THE COURT: Please be seated.

10:35:46 11 Plaintiff, call your next witness.

10:35:52 12 MR. FABRICANT: Yes, Your Honor, Mr. Lambrianakos
10:35:55 13 will announce the next witness.

10:35:57 14 THE COURT: All right. Please proceed.

10:36:04 15 MR. LAMBRIANAKOS: Your Honor, we call by video
10:36:06 16 Scott Hayden, vice president of intellectual property at
10:36:09 17 Amazon.

10:36:10 18 The times of the deposition are 10 minutes, 48
10:36:16 19 seconds for Plaintiff and 1 minute, 12 seconds for
10:36:22 20 Defendant.

10:36:22 21 THE COURT: Proceed with this witness by
10:36:24 22 deposition.

10:36:25 23 MR. LAMBRIANAKOS: Thank you.

10:36:25 24 SCOTT HAYDEN, PLAINTIFF'S WITNESS

10:36:29 25 PRESENTED BY VIDEO DEPOSITION

10:36:29 1 (Videoclip played.)

10:36:30 2 Q. Amazon had a particular policy related to in-licensing?

10:36:34 3 A. Yes.

10:36:34 4 Q. And what is that policy?

10:36:36 5 A. We respect the --

10:36:43 6 Q. Good morning. Could you please state your name and

10:36:46 7 location, for the record?

10:36:46 8 A. Scott Hayden in Woodinville, Washington.

10:36:55 9 Q. Okay. Now, I'm going to go back to some of the points

10:36:57 10 you just made. You said that if someone sends you

10:37:01 11 information or a letter or you become aware of a patent,

10:37:05 12 that's when you will determine whether Amazon is interested

10:37:07 13 in taking a license.

10:37:10 14 Are those -- are those the only ways that Amazon

10:37:13 15 becomes aware of patents that it may need to license?

10:37:17 16 A. No, there are other ways. There are things that we are

10:37:24 17 aware of as we've done our diligence before we launch

10:37:28 18 products. There are cases -- or patents that inventors

10:37:31 19 have created when they have worked at prior employers

10:37:36 20 and -- so that we have lots of opportunity or the

10:37:41 21 opportunity to look at those before they implement those

10:37:43 22 things.

10:37:43 23 So they are from several sources, but those are

10:37:46 24 the three principal ways of our people making them aware to

10:37:51 25 us.

10:37:51 1 We find those as doing our sort of clearance when
10:37:54 2 we're doing that. We do not do general clearance, but we
10:37:57 3 do -- you know, if we're aware of things, we would take a
10:38:01 4 look at those and investigate those.

10:38:02 5 Q. Can you describe in more detail what is done in terms
10:38:05 6 of the diligence related to IP prior to launch of a
10:38:15 7 product?

10:38:15 8 A. Yes. Where there are -- well, once we meet with the
10:38:19 9 inventors to determine what it is that they're going to
10:38:22 10 build or planning on building, then we talk to them and ask
10:38:25 11 them if they're aware of any intellectual property rights
10:38:28 12 that exist so that we can make sure we -- we clear those.

10:38:31 13 And if they have none -- you know, if we're aware
10:38:34 14 of things because we're generally working in that area or
10:38:39 15 that technology, then we'll investigate those and do the
10:38:42 16 diligence associated with those.

10:38:44 17 If the inventors are not aware of anything and
10:38:46 18 we're not aware of anything, then we'll proceed with filing
10:38:50 19 the patent application on our idea and, you know, go from
10:38:54 20 there.

10:39:01 21 Q. Are you speaking of inventors and engineers or
10:39:05 22 designers interchangeably?

10:39:06 23 A. Inside the company, yes. So our -- I think of our
10:39:10 24 inventors and engineers and developers are -- yes, they're
10:39:13 25 all the same.

10:39:14 1 Q. Earlier, you also stated that one of the ways in which
10:39:22 2 Amazon becomes aware of patents is if someone sends a
10:39:24 3 letter; is that right?

10:39:25 4 A. Yes.

10:39:27 5 Q. In that instance, how does Amazon make a determination
10:39:33 6 of whether the particular patent is relevant?

10:39:37 7 A. We would review the patent, review the way that we've
10:39:44 8 implemented our solution, and make that determination of
10:39:50 9 whether we believe that, you know, there's an issue or not.

10:39:52 10 Q. And could you explain a little more specifically how
10:39:55 11 Amazon would determine what the value of a particular
10:39:58 12 patent is to what Amazon wants to do?

10:40:00 13 A. If the -- their patent is valid, enforceable, and -- we
10:40:10 14 would look at the claims that determine the actual coverage
10:40:15 15 and the relevance of the patent to what we were doing. If
10:40:18 16 it is something that is a small piece that doesn't make any
10:40:20 17 difference if we use that or an alternative, then,
10:40:24 18 obviously, it's going to be worth a lot less.

10:40:27 19 If it is on something that is the -- the essential
10:40:30 20 piece of that, then it can be worth more. But all those
10:40:34 21 things still get to the point of being reasonable from the
10:40:37 22 standpoint.

10:40:38 23 We've had people in the past that have demanded --
10:40:42 24 you know, one -- one company came in and said, you know,
10:40:45 25 when I first started, that they want 5 percent of our gross

10:40:49 1 revenues. Unfortunately, we didn't make 5 percent at the
10:40:52 2 time.

10:40:52 3 So that was one where we would say, well, our best
10:40:56 4 answer there is, so just turn the feature off and we won't
10:40:59 5 do it. And so that's always an alternative that says if --
10:41:03 6 if we can't come to reasonable terms, then we'll stop doing
10:41:07 7 things.

10:41:07 8 Q. Earlier, you testified that another way in which Amazon
10:41:12 9 becomes aware of patents is through employees that
10:41:15 10 previously worked elsewhere; is that correct?

10:41:16 11 A. Yes.

10:41:17 12 Q. Could you describe that process further, how Amazon
10:41:22 13 becomes aware through those employees?

10:41:24 14 A. Usually, when we meet with the -- the
10:41:32 15 developers/designers and they're telling us about their new
10:41:34 16 product, we'll ask them if there's anything that they're
10:41:39 17 aware of as far as existing patents.

10:41:40 18 And sometimes those people have worked somewhere
10:41:42 19 else, and they have worked on relevant technology. That
10:41:45 20 could be one of the reasons why they were hired or why they
10:41:48 21 were qualified to do this job, and so it's something that
10:41:51 22 we just ask initially.

10:41:52 23 Q. If an employee tells you that they are aware of
10:42:00 24 intellectual property from their previous place of
10:42:05 25 employment, what steps are taken from that point?

10:42:08 1 A. We would then -- if they know, we would ask them what
10:42:12 2 that is. If not, then we -- and if it's, you know, a
10:42:16 3 publicly issued patent, then we can do a search on their
10:42:19 4 name and find that patent or patents and take a look at
10:42:25 5 those, then make a determination as we are reviewing their
10:42:30 6 product design -- product-specifics design.

10:42:33 7 Then we can evaluate that to determine if it is
10:42:36 8 relevant or, you know, necessary to either obtain a license
10:42:39 9 for that or make a design-around so that we do not, you
10:42:42 10 know, infringe the IP rights of others.

10:42:43 11 Q. Are you only referring to instances where the
10:42:51 12 particular employee is the named inventor?

10:42:57 13 A. No. There are other cases where, you know, they could
10:43:01 14 have been working in the field for the last X number of
10:43:04 15 years. And if they're aware of patents in that space, then
10:43:07 16 we ask them to share that information with us.

10:43:09 17 And we also educate them -- educate our
10:43:13 18 developers/designers employees not to look for patents of
10:43:17 19 others. And sometimes they are aware of them just because
10:43:21 20 either their prior job taught them to look -- they were in
10:43:25 21 a job where they had to look, they saw it in a newspaper
10:43:28 22 article or on the Internet or things like that, so that's
10:43:31 23 why you always ask them if anyone is aware of any
10:43:34 24 third-party patents, regardless of whether they were the
10:43:40 25 inventor or not.

10:43:40 1 I've lost my train of thought there.

10:43:43 2 I think, you know, just a -- you know, they know

10:43:43 3 the cases that they're working on or that they were named

10:43:45 4 inventors on, they could be aware of third-party patents,

10:43:50 5 and if they saw it on the Internet or their prior job had

10:43:53 6 required them to look at patents or they were involved in a

10:43:56 7 design-around in a past job where they were aware of those

10:44:00 8 patents.

10:44:00 9 Q. What about the situation where the employee is

10:44:03 10 generally aware of a patent application or patents that are

10:44:10 11 soon to issue from their prior employer?

10:44:13 12 A. That fits in the same answer of, you know, we ask them

10:44:16 13 if they're aware of things. And if they are public, then

10:44:19 14 they can tell us about them. If they are not, then that's

10:44:22 15 the trade secret or intellectual property of that prior

10:44:27 16 employer.

10:44:27 17 And so those are, you know, sometimes tricky

10:44:30 18 discussions, I guess, from that standpoint of making sure

10:44:33 19 that we do not ask too much. But we ask them, you know,

10:44:36 20 essentially for that employee to make that determination of

10:44:39 21 whether they believe that that prior work and patent --

10:44:43 22 pending patent application is relevant to what they are

10:44:47 23 doing.

10:44:47 24 So, you know, if we ask them, is this -- are you

10:44:50 25 doing it the same way you were doing it that was in that

10:44:57 1 last job, in that last patent application, and if they say,
10:45:01 2 no, it's completely different.

10:45:02 3 And depending on what it is, sometimes we ask
10:45:04 4 them, how is it different? And so had that expectation
10:45:07 5 that they can, you know, share that information with us.
10:45:10 6 There may be instances where they can't.

10:45:13 7 And in those cases, typically what we'll do is
10:45:16 8 we'll either, you know, pull that person off of the team or
10:45:20 9 have them not be involved in the design of that feature so
10:45:24 10 that we verify or make sure to the best extent possible
10:45:27 11 that we don't become contaminated by their -- IP of the
10:45:33 12 prior employer.

10:45:33 13 Q. Does Amazon have a specific policy related to
10:45:37 14 in-licensing?

10:45:37 15 A. Yes.

10:45:38 16 Q. And what is that policy?

10:45:40 17 A. We respect the rights of others. We'll engage in the
10:45:51 18 discussion. And where we need to obtain a license, we
10:45:54 19 will. And if we're able to do that in -- in terms of what
10:45:59 20 we're willing to do, then we'll proceed.

10:46:01 21 Generally, those are -- you know, the expectation
10:46:03 22 of the policy is to do a one-time, lump-sum fixed payment.
10:46:08 23 No running royalties. We essentially take all the risk.

10:46:12 24 Then that says if we do it, we'll pay a certain
10:46:16 25 amount. If we decide not to do it, we'll still pay the

10:46:19 1 same amount. But that way you don't have to worry about.

10:46:19 2 If we pay something different -- where if we spend

10:46:23 3 more on advertising, if we sell more, then the licensor

10:46:26 4 gets more money. Instead, we just take all that risk, and,

10:46:30 5 you know, pay them a certain amount and say, this is what

10:46:32 6 we think it's worth.

10:46:33 7 If they're willing to accept that, then we do the

10:46:35 8 deal and move on. That way we don't have to deal with them

10:46:38 9 again later or worry about, you know, later they want to,

10:46:41 10 you know, jack up the rights or anything like that.

10:46:44 11 Instead, it's a -- it's a one-and-done approach.

10:46:47 12 Q. How does Amazon determine what the customer would be

10:46:50 13 willing to pay for the feature?

10:46:51 14 A. Sometimes that is looking at alternative products. You

10:46:55 15 know, so we have, you know, a large catalog of, you know,

10:47:00 16 lots of devices that we could see what people are paying

10:47:04 17 for those things.

10:47:05 18 Q. Where the feature is not paid for separately, how does

10:47:09 19 Amazon determine what its value is to the customer?

10:47:12 20 A. Well, if they are similar products, then you can see

10:47:16 21 what, you know, one with the feature and one without the

10:47:19 22 feature, what's their sales price. That's one indication.

10:47:21 23 You are going to have to think about the margin difference

10:47:24 24 associated with those, but that's -- that's one way that we

10:47:27 25 can get there.

10:47:27 1 Q. Where the feature is software-related, how does Amazon
10:47:36 2 determine whether it's present in other similar products?

10:47:39 3 A. Usually, you can tell by the specifications of what it
10:47:43 4 does, and it could be it has, you know, this noise
10:47:49 5 canceling. It could have that ability to turn something on
10:47:55 6 or off, or the ability to phone home, or lots of different
10:47:59 7 things. But, usually, it's in the specification.

10:48:01 8 If it's not, then sometimes we're able to send
10:48:04 9 those to people that can do evaluations to try and run
10:48:08 10 numerous tests to determine if something has something
10:48:10 11 inside or not.

10:48:11 12 (Videoclip ends.)

10:48:12 13 THE COURT: Does that complete this witness by
10:48:18 14 deposition?

10:48:18 15 MR. FABRICANT: Yes, it does, Your Honor.

10:48:19 16 THE COURT: Call your next witness.

10:48:22 17 MR. LAMBRIANAKOS: Your Honor, Plaintiff calls by
10:48:31 18 deposition Wei Li, former hardware design manager at
10:48:35 19 Amazon's Lab126.

10:48:38 20 The splits are for Plaintiff, 24 minutes, 53
10:48:41 21 seconds, and for Defendant 7 minutes, 38 seconds.

10:48:44 22 THE COURT: Proceed with this witness by
10:48:46 23 deposition.

10:48:46 24 MR. LAMBRIANAKOS: Thank you.

10:48:46 25 WEI LI, PLAINTIFF'S WITNESS

10:48:47 1 PRESENTED BY VIDEO DEPOSITION

10:48:47 2 (Videoclip played.)

10:48:48 3 Q. Mr. Li, could you please spell your name for the

10:48:55 4 record?

10:48:56 5 A. Yes. My first name is Wei, spelled as W-e-i. My last

10:49:05 6 name is Li, spelled L-i.

10:49:06 7 Q. And what did you do after receiving your Master's

10:49:10 8 degree?

10:49:10 9 A. I went to work at the Li Creative.

10:49:12 10 Q. And how long did you work at Li Creative?

10:49:18 11 A. Let me do some math.

10:49:28 12 Three years and two months.

10:49:37 13 Q. And where did you work after Cisco?

10:49:42 14 A. Amazon.

10:49:42 15 Q. Was there a certain division of Amazon that you were

10:49:47 16 working at?

10:49:50 17 ATTORNEY: Object to form.

10:49:51 18 A. It's called Lab126.

10:49:52 19 Q. And what were you doing at Lab126?

10:49:59 20 A. I was working on -- I was a hardware design engineer.

10:50:05 21 Q. Okay. Mr. Li, I'd like to talk about your time at Li

10:50:10 22 Creative.

10:50:10 23 And what time frame, again, did you work at Li

10:50:13 24 Creative?

10:50:13 25 A. It's --

10:50:16 1 ATTORNEY: Objection, form.

10:50:18 2 A. -- 2000 -- 2004 to 2008.

10:50:33 3 Q. And what was your job title while you were at Li

10:50:37 4 Creative?

10:50:37 5 A. Research engineer.

10:50:38 6 Q. What were your job responsibilities as research

10:50:48 7 engineer?

10:50:48 8 A. So I was doing both firmware development and hardware

10:50:52 9 development for their product.

10:50:53 10 Q. What projects were you working on while at Li Creative?

10:51:01 11 A. I remember CrispMic.

10:51:05 12 Q. Was the beamforming adaptive or fixed?

10:51:09 13 A. It was fixed.

10:51:10 14 Q. Can you explain to me what does fixed beamforming mean?

10:51:21 15 A. Fixed beamforming means there's an assumption over the

10:51:27 16 desired signal come from one direction.

10:51:30 17 Q. Was there an assumption for the CrispMic on which

10:51:35 18 direction it was coming from, the sound?

10:51:37 19 A. Yes. We assumed the sound come from in front of the

10:51:47 20 CrispMic.

10:51:48 21 Q. By "in front of," do you mean 90-degree angle to the

10:51:58 22 linear microphone array?

10:52:00 23 ATTORNEY: Form.

10:52:01 24 A. Correct.

10:52:01 25 Q. Did the CrispMic device include an elevation angle?

10:52:04 1 A. No.

10:52:04 2 Q. Did you work on sound source localization while you

10:52:07 3 were at Li Creative?

10:52:08 4 A. I don't remember.

10:52:08 5 Q. While you were at Li Creative, did you work on any

10:52:13 6 devices with a circular microphone array?

10:52:20 7 A. No, I don't. I didn't.

10:52:23 8 Q. To be clear, you did not work on any devices with a

10:52:27 9 circular microphone array?

10:52:28 10 A. That is correct.

10:52:38 11 Q. Digital signal processors, are they fixed point or

10:52:40 12 floating point?

10:52:41 13 A. They could be.

10:52:41 14 ATTORNEY: Objection, form.

10:52:42 15 A. So there are two kinds of digital signal processor.

10:52:46 16 One is using a fixed point. The other type is floating

10:52:50 17 point.

10:52:50 18 Q. And what type of beamforming was the CrispMic device

10:52:54 19 performing?

10:52:56 20 A. Here it says fixed beamformer.

10:52:58 21 Q. Do you recall if the fixed beamformer calculated any

10:53:11 22 delays?

10:53:12 23 A. No, I think -- I remember we used the filter and some

10:53:14 24 method.

10:53:14 25 Q. Earlier you mentioned you worked at Amazon Lab126. Do

10:53:18 1 you recall that?

10:53:19 2 A. Correct.

10:53:21 3 Q. What time frame did you work at Lab126?

10:53:25 4 A. 2011 to 2013.

10:53:29 5 Q. Do you remember the month that you left in 2013?

10:53:38 6 A. Yeah. Around Thanksgiving.

10:53:40 7 Q. And do you remember what month did you join in 2011?

10:53:48 8 A. I joined Amazon in September.

10:53:58 9 Q. And when did you leave Li Creative?

10:54:04 10 A. January of 2008.

10:54:11 11 Q. All right. And what month was that that you joined

10:54:14 12 Lab126?

10:54:15 13 A. I think it's September.

10:54:18 14 Q. And what was your job -- job title when you joined?

10:54:24 15 A. Hardware engineer.

10:54:28 16 Q. And did you have that position the entire time you were

10:54:33 17 at Lab126?

10:54:37 18 A. I had the one promotion from --

10:54:40 19 Q. When --

10:54:41 20 A. -- hardware engineer to --

10:54:47 21 Q. What was your promotion to?

10:54:51 22 A. From hardware engineer to senior hardware engineer.

10:54:56 23 Q. And what were your job responsibilities as a hardware

10:55:03 24 engineer?

10:55:05 25 A. Develop hardware for Lab126 product.

10:55:15 1 Q. And what product was that?

10:55:17 2 A. It was Echo.

10:55:21 3 Q. Did the product have a code name at the time?

10:55:25 4 A. Yes. Project D, Doppler.

10:55:30 5 Q. But did it have two code names, Project D and Doppler?

10:55:38 6 A. Yeah, we -- it's the same thing. But Doppler started

10:55:43 7 with D.

10:55:44 8 Q. Can you describe, what were you doing for hardware

10:55:49 9 development for the Doppler project?

10:55:56 10 A. I did the hardware for -- for Doppler audio. That

10:56:07 11 means I have selected microphones, decided how to mount the

10:56:13 12 microphones on the product, and work on speakers.

10:56:21 13 I travel to China to support the hardware builds

10:56:31 14 to make sure we have a solid product from the factory.

10:56:35 15 Q. Anything else?

10:56:38 16 A. Can you be more specific?

10:56:44 17 Q. Yeah. Were there other aspects of Doppler that you

10:56:50 18 were working on?

10:56:51 19 A. Yeah. We also work closely with the software team to

10:57:01 20 develop microphone array.

10:57:02 21 Q. Can you describe how you worked with the software team?

10:57:15 22 A. We make sure the hardware has enough sensitivity

10:57:21 23 signal-to-noise ratio, and that the placement of the

10:57:28 24 microphones are optimized for certain digital signal

10:57:38 25 processing functions.

10:57:39 1 Q. Did you assist in writing any software with the
10:57:41 2 software team?

10:57:42 3 A. No, I -- I -- I didn't.

10:57:46 4 Q. Did you assist in developing any algorithms with the
10:57:57 5 software team?

10:58:04 6 A. I think so. Yes, we discussed --

10:58:09 7 Q. What algorithms --

10:58:11 8 A. -- algorithms together.

10:58:13 9 Q. What algorithms did you discuss?

10:58:15 10 A. We discussed a lot about AEC, which is acoustic echo
10:58:28 11 cancellation. I don't recall other areas.

10:58:30 12 Q. What did you discuss with respect to acoustic echo
10:58:39 13 cancellation?

10:58:39 14 A. How to achieve the best performance of acoustic echo
10:58:49 15 cancellation. What's the best way to control the -- the
10:58:57 16 speaker gain to benefit the algorithm.

10:59:01 17 Q. Did you discuss -- while at Lab126, did you participate
10:59:11 18 in the discussion of any other algorithms?

10:59:13 19 A. I think so.

10:59:19 20 Q. Do you recall what?

10:59:22 21 A. We -- I think we also discussed microphone array,
10:59:30 22 beamformer, speaker tuning, because it was a small team.

10:59:36 23 Q. Was your role more limited to the hardware design and
10:59:43 24 how to implement that software into the hardware?

10:59:50 25 A. That's correct. I was a hardware engineer, and my work

10:59:53 1 was -- was on hardware.

10:59:54 2 Q. So you weren't really involved in the software design
10:59:58 3 that was going into the hardware?

11:00:01 4 A. I was not.

11:00:02 5 Q. Were you ever told why you weren't allowed to talk to
11:00:05 6 other project teams about what you were doing on -- in your
11:00:08 7 project?

11:00:08 8 A. We really concerned about the project getting leak
11:00:15 9 before it launch. There is an element of surprise just to
11:00:21 10 get best -- best coverage or get people excited. Yeah, I
11:00:32 11 didn't ask why because I feel, yeah, that's the right thing
11:00:37 12 to do.

11:00:37 13 Q. Was that normal in your experience to have project
11:00:40 14 teams not talk to each other, from your previous and other
11:00:45 15 work experience?

11:00:46 16 A. Apple did the same.

11:00:51 17 Q. In your observations while at Lab126, did people abide
11:00:56 18 by that policy and not talk to other project teams about
11:00:59 19 their work?

11:01:01 20 A. That is correct. We even don't have badge access to
11:01:07 21 other offices.

11:01:13 22 Q. What did you mean by we didn't have access to other
11:01:17 23 offices?

11:01:19 24 A. For example, I was working on second floor, and third
11:01:25 25 floor has a project -- the other project team working --

11:01:29 1 I -- actually, my badge doesn't work -- doesn't work on the
11:01:33 2 third floor. So I couldn't have access to the third floor.
11:01:36 3 Q. So was a different project team on the third floor?
11:01:43 4 A. That was correct.
11:01:45 5 Q. And so you didn't have access to where that project
11:01:50 6 team was located?
11:01:53 7 A. Correct.
11:01:54 8 Q. Do you recall if your employment agreement or NDA at
11:02:00 9 Lab126 included restrictions on using or disclosing a
11:02:04 10 previous employer's technology?
11:02:07 11 A. I have a memory of such, of course, yes.
11:02:15 12 Q. And what is that memory?
11:02:31 13 A. Yeah, I -- it's hard for me to find out the details.
11:02:39 14 But that -- that's a general rule of thumb for engineers to
11:02:46 15 switch employers in Bay Area. We -- we definitely don't
11:02:50 16 talk our previous projects with -- with the current
11:02:57 17 employee.
11:03:02 18 Q. And did you abide by that practice while you were at
11:03:07 19 Lab126?
11:03:09 20 A. Yeah.
11:03:10 21 Q. Did you use or disclose Li Creative technology while
11:03:14 22 working at Lab126?
11:03:15 23 A. No.
11:03:26 24 Q. So just to clarify, did you use Li Creative technology
11:03:29 25 in your work at Lab126?

11:03:31 1 A. Li Creative technology? Do you mean the trade secret
11:03:37 2 of Li Creative or just any skills I developed during my
11:03:43 3 employment with Li Creative?

11:03:46 4 Q. Their confidential technology?

11:03:51 5 A. Yeah, the -- the answer is no.

11:03:54 6 Q. Did you disclose to anyone at Lab126 Li Creative
11:03:58 7 confidential technology?

11:03:59 8 A. No.

11:04:03 9 Q. Did Li Creative ever come to Lab126 for a meeting?

11:04:10 10 A. Yes.

11:04:13 11 Q. Do you recall when that was?

11:04:20 12 A. I -- it's 2011.

11:04:28 13 Q. Do you remember how long you had been at Lab126 when
11:04:36 14 that meeting happened?

11:04:38 15 A. Very short period of time I spent at Lab126 at that
11:04:45 16 time.

11:04:45 17 Q. And what was your role with respect to that meeting?

11:04:51 18 A. I was -- I think -- yeah, I don't remember how I get
11:05:07 19 involved into a meeting. I did attend the meeting.

11:05:17 20 This -- the email from Peter told me he was coming
11:05:20 21 to Lab126, and, of course, I -- I want to see him, but I
11:05:27 22 don't remember how was I invited into a meeting.

11:05:31 23 Q. Do you recall if it was Dr. Li who invited you to the
11:05:39 24 meeting?

11:05:40 25 A. I don't think that's the case because he's a guest to

11:05:44 1 the meeting. So he couldn't really invite me to the
11:05:49 2 meeting.

11:05:49 3 Q. How did you first hear about the meeting?

11:05:51 4 A. From Peter.

11:05:52 5 Q. And what did Peter tell you about the meeting -- or
11:05:58 6 Dr. Li? I apologize.

11:06:01 7 A. He told me by email he's coming to Lab126 at certain
11:06:09 8 date. That's it.

11:06:15 9 Q. Why was Dr. Li coming to Lab126?

11:06:18 10 A. I don't know.

11:06:23 11 Q. Why did Dr. Li send you an email informing you that he
11:06:27 12 was coming to Lab126?

11:06:32 13 A. We were still friends, so we tried our best to just
11:06:40 14 socialize if there is a chance.

11:06:42 15 Q. Who was present at the meeting between Li Creative and
11:06:47 16 Lab126?

11:06:54 17 A. I was there. Peter was there. Peter also had an
11:06:59 18 associate with him. There were a few people from Lab126
11:07:07 19 which I didn't work closely, so I couldn't remember their
11:07:11 20 names.

11:07:11 21 Q. What happened during the meeting?

11:07:13 22 A. Peter had a few demos. He also had a presentation.

11:07:27 23 Q. What were the demos?

11:07:34 24 A. I don't remember.

11:07:36 25 Q. What was the presentation?

11:07:39 1 A. No memory.

11:07:46 2 Q. How long was the meeting?

11:07:48 3 A. Usually, we schedule the window meeting for one

11:07:56 4 hour-long, but I don't have memory of that meeting.

11:07:59 5 Q. Do you remember if there were physical samples at the

11:08:02 6 meeting?

11:08:06 7 A. I -- I think so.

11:08:08 8 Q. What were they of?

11:08:16 9 A. What I remember was Peter actually gave me a CrispMic

11:08:22 10 sample after meeting, in the original package because it's

11:08:26 11 on sale already. He -- he give for me -- give to me as a

11:08:31 12 souvenir. So he could have showed that sample, but I don't

11:08:38 13 have memory about -- exactly about that meeting.

11:08:42 14 Q. All right. So I'm introducing Exhibit No. 1023 with

11:08:49 15 the Production No. LCT-AMAZON00032461?

11:09:02 16 A. Yes.

11:09:02 17 Q. Mr. Li, do you see at the top of the email it says from

11:09:10 18 Li, Wei --

11:09:12 19 A. That's right.

11:09:13 20 Q. -- sent on October 5th, 2011?

11:09:17 21 A. Uh-huh.

11:09:18 22 Q. And is that from you?

11:09:19 23 A. From this email, yeah, I think I wrote it.

11:09:26 24 Q. And you wrote: Hi, Peter. I am glad you are coming to

11:09:31 25 showcase Lct's technologies.

11:09:36 1 Do you recall the LCT's technology Dr. Li
11:09:42 2 showcased?
11:09:43 3 A. I don't. I don't remember.
11:09:46 4 Q. Why don't you remember?
11:09:51 5 A. Oh, it's -- it's been long. Also, I don't want to
11:09:57 6 speak out the wrong technology. If --
11:10:07 7 Q. Okay.
11:10:08 8 A. Yeah, I just don't want to speculate.
11:10:11 9 Q. That's fine.
11:10:12 10 Why were you glad Dr. Li was coming?
11:10:18 11 A. That's just a pleasantry, right, you see your friends
11:10:24 12 after four or five years.
11:10:29 13 Q. Prior to Dr. Li coming to visit Lab126, when had been
11:10:38 14 the last time you saw him?
11:10:41 15 A. That should be a time I left Li Creative.
11:10:48 16 Q. Had you corresponded with him between the time you left
11:10:56 17 and the time he came to Lab126?
11:10:58 18 A. Yes, we do. Sometimes we make phone calls.
11:11:04 19 Q. What would you discuss?
11:11:05 20 A. For example, I had a baby. What else? My employment.
11:11:30 21 Yeah, that's what I remember.
11:11:31 22 Q. So back to the email. You wrote: I also recommended
11:11:38 23 your technology to my team.
11:11:43 24 What did you mean by that?
11:11:46 25 A. That means I introduced his technology to some of my

11:11:53 1 co-workers.

11:11:56 2 Q. What technology did you introduce?

11:12:00 3 A. Should be on the line of noise reduction, informal,
11:12:09 4 but -- yeah, I don't have precise memory. At that time,
11:12:20 5 there's a website from Li Creative, and they will show
11:12:24 6 stuff on their website. That's -- that's probably what --
11:12:32 7 whatever they show on the website is reference. I -- I
11:12:39 8 don't have full memory about that.

11:12:42 9 Q. So, previously, you stated you wouldn't use or disclose
11:12:47 10 your previous employer's confidential information. Do you
11:12:50 11 remember that?

11:12:51 12 ATTORNEY: Objection to form.

11:12:53 13 A. I do.

11:12:55 14 Q. Were you talking to your team about public information
11:12:59 15 of Li Crea -- Li Creative or confidential information?

11:13:05 16 A. We only talk about public informations.

11:13:10 17 Q. And for that, were you looking at Li Creative's
11:13:19 18 website?

11:13:20 19 A. That's what I would do.

11:13:22 20 Q. Did you show your team members the Li Creative website?

11:13:31 21 A. I don't have a memory. But --

11:13:39 22 Q. Who did you talk to?

11:13:42 23 A. -- I probably would have.

11:13:44 24 I would talk to my boss, to other team members in
11:13:58 25 the hardware team. Maybe people in the software team, but

11:14:05 1 not sure. They all know -- they all knew that I worked for
11:14:09 2 the company. They could just have looked at the website
11:14:14 3 to figure out what I have done.

11:14:16 4 Q. In the email, you continued, you wrote: They are quite
11:14:22 5 interested.

11:14:23 6 What did you mean by that?

11:14:24 7 A. That means, oh, yeah, that sounds interesting. Maybe
11:14:28 8 we can take a look. Maybe we can invite them come for demo
11:14:41 9 or meeting.

11:14:43 10 Q. Why did they say that sounds interesting?

11:14:45 11 A. Because at that time, we were working on microphone
11:14:50 12 array, noise reduction for Echo. If there's some other
11:14:59 13 company -- some other company working on same technology
11:15:02 14 and they want to sell, we -- we could take a look.

11:15:07 15 Q. So you wrote: What's your schedule at Lab126?

11:15:13 16 Why did you write that?

11:15:14 17 A. I think probably it's related with -- the next
11:15:28 18 sentence, if he can have a separate demo. Because if we
11:15:33 19 want him to demo, then we need to figure out the
11:15:37 20 availability of the people and his availability.

11:15:40 21 Q. All right. So, Mr. Li, I introduced what's previously
11:15:45 22 been marked as Exhibit 1014, with Bates No. AMZN0002007.

11:15:55 23 What is this?

11:15:56 24 A. I would say that's a cover letter -- the cover page is
11:16:04 25 about the ICASSP conference in 2009. Then there's a paper

11:16:15 1 co-authored Peter Li, Manli, and myself.

11:16:23 2 Q. Is there a particular product that this article is

11:16:27 3 describing?

11:16:27 4 A. Yeah, it looks like it's talking about CrispMic.

11:16:31 5 Q. Mr. Li, as an engineer, when you read that

11:16:33 6 introduction, does this suggest the microphone array can be

11:16:38 7 used for sound source localization?

11:16:40 8 A. I just scanned through the paper. Nothing is mentioned

11:16:45 9 about sound source localization. So, with that, I don't

11:16:49 10 think this paper is talking about sound source

11:16:51 11 localization.

11:16:51 12 Q. Does the beamforming calculate a delay?

11:16:59 13 A. I don't see it calculate delay.

11:17:02 14 Q. Does it measure a delay?

11:17:05 15 A. The delay will be -- let me see, how do I answer this?

11:17:13 16 It doesn't matter the delay, no.

11:17:15 17 Q. Did you look at the patent when you were Googling the

11:17:19 18 case?

11:17:20 19 A. I didn't -- I -- I don't remember there's a patent

11:17:26 20 number on that case.

11:17:27 21 But, you know, we -- we have a habit of not

11:17:33 22 looking at the patents. That's what our lawyers told us

11:17:45 23 when we work for multiple -- for different tech --

11:17:49 24 technical companies.

11:17:50 25 Q. When did you start using that practice?

11:17:55 1 A. As far as I remember, I -- at least I started in Bay
11:18:02 2 Area.

11:18:02 3 Q. When?

11:18:02 4 A. Since I moved to Bay Area. That's -- that's at
11:18:11 5 least -- I moved to Bay Area in 2009, March. March 2000 --
11:18:19 6 no -- yeah, March 2009.

11:18:23 7 Q. Is that about when you started using the practice not
11:18:26 8 to look at patents?

11:18:29 9 A. That's as early as I can remember. I could have
11:18:32 10 started earlier.

11:18:33 11 Q. Knowing that you had worked on microphone arrays at Li
11:18:38 12 Creative as part of your past experience, you testified
11:18:44 13 that Amazon hired you to work on the Echo devices, correct?

11:18:48 14 A. Yes, Amazon hired me.

11:18:50 15 Q. And you worked on the Echo devices, correct?

11:18:54 16 A. Correct.

11:18:54 17 Q. And knowing that you had worked on microphones at --
11:19:01 18 microphone arrays at Li Creative as part of your past
11:19:04 19 experience, you testified that someone at Amazon invited
11:19:07 20 you to attend the meeting with Li Creative, correct?

11:19:11 21 A. I don't remember who exactly invited me.

11:19:17 22 Q. But someone at Amazon invited you to attend the meeting
11:19:23 23 with Li Creative; you just don't remember who that person
11:19:25 24 was, correct?

11:19:26 25 A. Correct.

11:19:26 1 Q. When you worked at Li Creative, you were aware that
11:19:31 2 Dr. Li had filed for patents while you worked at Li
11:19:36 3 Creative, correct?
11:19:37 4 A. Yes.
11:19:37 5 Q. Was that a yes?
11:19:38 6 A. Yes.
11:19:38 7 Q. So when you attended the meeting with Dr. Li at Amazon,
11:19:43 8 you personally knew that he had patents or patent
11:19:47 9 applications, correct?
11:19:48 10 A. That's very broad. But, yes, I know Peter has patents.
11:19:52 11 I knew it.
11:19:53 12 Q. And you knew it at the time when Am -- when you -- when
11:20:00 13 you had the meeting with Dr. Li at Amazon that he had
11:20:03 14 patents or patents applications, right?
11:20:05 15 ATTORNEY: Objection, form.
11:20:07 16 A. I did.
11:20:08 17 Q. Can you repeat your answer?
11:20:13 18 A. Yes. I -- I did know that Peter had patents.
11:20:23 19 Q. You said earlier that you may have applied for or
11:20:26 20 received a patent at Lab126 and that it may have been with
11:20:31 21 someone named Amit; is that correct?
11:20:35 22 A. That's correct.
11:20:38 23 Q. Is that Amit Chhetri?
11:20:40 24 A. That sounds right.
11:20:46 25 Q. You and Amit Chhetri both worked on the Echo devices,

11:20:51 1 correct?

11:20:51 2 A. Correct.

11:20:51 3 Q. Did you ever say anything about Dr. Li's patents while

11:20:57 4 at Lab126?

11:21:01 5 A. No.

11:21:17 6 Q. Did you ever say anything about Dr. Li's patent

11:21:21 7 applications while at Lab126?

11:21:23 8 A. No.

11:21:26 9 Q. Did you hear anyone else refer to Dr. Li's patents or

11:21:38 10 patent applications while at Lab126?

11:21:43 11 A. I don't remember.

11:21:45 12 (Videoclip ends.)

11:21:50 13 THE COURT: Does that complete this witness by

11:21:57 14 deposition?

11:21:57 15 MR. FABRICANT: Yes, Your Honor.

11:21:58 16 THE COURT: Call your next witness, Plaintiff.

11:22:00 17 MR. FABRICANT: Thank you, Your Honor.

11:22:01 18 MR. LAMBRIANAKOS: Your Honor, Plaintiff calls

11:22:09 19 Rohit Prasad, vice president and head scientist for Alexa

11:22:14 20 artificial intelligence at Amazon.com.

11:22:18 21 Plaintiff's runtime is 5 minutes, 56 seconds;

11:22:21 22 Defendants' is 3 minutes, 3 seconds.

11:22:24 23 THE COURT: Proceed with this witness by

11:22:26 24 deposition.

11:22:27 25 MR. LAMBRIANAKOS: Thank you.

11:22:27 1 ROHIT PRASAD, PLAINTIFF'S WITNESS

11:22:32 2 PRESENTED BY VIDEO DEPOSITION

11:22:32 3 (Videoclip played.)

11:22:33 4 Q. Could you please state your name and city and state of

11:22:36 5 residence for the record?

11:22:38 6 A. Yeah. My name is Rohit Prasad. I live in Lexington,

11:22:42 7 Massachusetts.

11:22:42 8 Q. Mr. Prasad, by whom are you employed?

11:22:46 9 A. I'm employed by Amazon.com.

11:22:49 10 Q. I'll refer to Amazon.com LLC as Amazon for the purposes

11:22:55 11 of this deposition.

11:22:55 12 What is your title currently?

11:22:57 13 A. My title is vice president and head scientist for Alexa

11:23:01 14 AI.

11:23:01 15 Q. What is your involvement in the Echo devices?

11:23:06 16 A. As I said, my involvement in Echo devices is -- when I

11:23:13 17 was director of machine learning was focused on audio to

11:23:18 18 text and text to -- text to noting what Alexa should do.

11:23:23 19 Similar responsibilities now, except Alexa's

11:23:25 20 intelligence is more mature now, so it is more focused on

11:23:29 21 understanding the best action it can take for customers

11:23:31 22 amongst the 100,000 skills that exist on Alexa.

11:23:37 23 Q. Have you had responsibilities for hiring employees for

11:23:51 24 the teams responsible for the Echo devices and for Alexa?

11:23:54 25 A. I've had responsibility for hiring scientists and

11:23:58 1 engineers and product managers on essentially components
11:24:02 2 that I discussed already.

11:24:04 3 Q. Did your recruiting responsibilities also include
11:24:10 4 reviewing resumes for potential candidates?

11:24:15 5 A. Yes, to the -- in terms of resumes that are -- that are
11:24:19 6 sent to me, yes.

11:24:20 7 Q. Do you know who Peter Li is?

11:24:23 8 A. Yeah, I know Peter Li. I -- yes.

11:24:28 9 Q. What do you know of Peter Li?

11:24:34 10 A. I spoke to him in June 2013 time frame.

11:24:40 11 Q. Why did you speak to Peter Li in June 2013?

11:24:44 12 A. His resume was surfaced to me for -- by a recruiter. I
11:24:54 13 was looking for a director or a senior manager roles for
11:24:58 14 speech recognition for Alexa. And in that context, I
11:25:02 15 looked at Peter Li's resume and spoke to him.

11:25:06 16 Q. What was the substance of your discussion with Peter Li
11:25:09 17 in June of 2013?

11:25:10 18 A. I interviewed him to understand whether he's a fit for
11:25:13 19 the role I had or not.

11:25:15 20 Q. During your conversations with Peter Li in June of
11:25:20 21 2013, did he inform you that he had previously provided a
11:25:23 22 demonstration to Lab126?

11:25:27 23 A. Yes, he did mention a demonstration to Lab126.

11:25:31 24 Q. What did he say about the demonstration to Lab126?

11:25:33 25 A. He didn't say anything specific, nor I felt it was

11:25:43 1 pertinent for what I was looking for.

11:25:45 2 Q. Why wasn't it pertinent?

11:25:47 3 A. Because as I mentioned, my focus is more after the
11:25:56 4 speech signal has been sent to my systems whether we can
11:25:58 5 recognize it with high fidelity for converting the audio
11:25:59 6 into text. I wasn't interested in speed signal processing,
11:26:05 7 which is where Peter's expertise lie.

11:26:09 8 Q. Did you speak to anyone at Lab126 after your
11:26:11 9 conversation with Peter Li in June 2013?

11:26:13 10 A. No, I did not speak to anyone.

11:26:15 11 Q. You didn't inquire to anyone at Lab126 about the
11:26:22 12 demonstration?

11:26:22 13 A. No, I did not.

11:26:23 14 Q. I'm going to introduce Exhibit 1. This is a document
11:26:33 15 produced by Amazon with beginning Production No.
11:26:40 16 AMZN0137694.

11:26:40 17 Please take a moment to review that document,
11:26:43 18 Mr. Prasad, and let me know if you recognize it.

11:26:45 19 A. Yes, I recognize this document. This is essentially
11:26:51 20 extract of -- of the phone screen notes that I took while
11:26:54 21 discussing the role with Peter.

11:26:56 22 Q. And I will refer you to the portion of the document on
11:27:04 23 the first page where it reads: Invited by Lab126 to
11:27:10 24 present technology. Mic Array and RES and 3D song
11:27:18 25 playback.

11:27:18 1 Do you see that?

11:27:19 2 A. Yeah, I see that.

11:27:22 3 Q. You see that. Do these notes that I just read from

11:27:25 4 Exhibit 1 reflect what you referred to earlier when you

11:27:30 5 indicated that Peter Li informed you about a demonstration

11:27:33 6 he had provided to Lab126?

11:27:34 7 A. Yeah. It's simply saying he made a demonstration. And

11:27:41 8 as you can see, my focus was -- after asking when was this

11:27:46 9 meeting, it was immediately focused on his strengths and

11:27:50 10 fit for my role.

11:27:51 11 Q. What is 3D song playback?

11:27:56 12 A. In that one, he just mentioned that's not an expertise

11:28:01 13 area I have for song playback. It's not my -- I just took

11:28:08 14 it as notes, but that's not where my expertise lies.

11:28:12 15 Q. Do you have an understanding of what 3D song playback

11:28:20 16 refers to?

11:28:20 17 A. Not in detail. Because it's clearly about signal

11:28:24 18 processing on enhancing the input, which is what mic array

11:28:29 19 is, and playback is probably for announcing the output in

11:28:33 20 this case.

11:28:34 21 Again, I'm not the expert at this. You need to

11:28:35 22 talk to an audio engineer for that.

11:28:37 23 Q. Do you have any outside knowledge of Mr. Li's meeting

11:28:47 24 with Phil Hilmes, beyond this document?

11:28:50 25 A. No, I don't.

11:28:51 1 Q. Did you speak to Mr. Hilmes about his interview with
11:28:55 2 Mr. -- Dr. Li, rather?
11:28:56 3 A. No, I did not.
11:28:59 4 Q. Did you meet with Dr. Li on any other occasions beyond
11:29:04 5 the phone interview you conducted in June of 2013?
11:29:10 6 A. Not that I recall.
11:29:12 7 Q. Did you participate in a launch event for the first
11:29:15 8 Echo device in New York in 2014?
11:29:17 9 A. Yes, I did.
11:29:20 10 Q. What was the nature of your participation in that
11:29:24 11 event?
11:29:25 12 A. I demonstrated the product. And I also talked briefly
11:29:31 13 about how it works, and this was a typical launch event and
11:29:38 14 venue where you had hundreds of people.
11:29:41 15 Q. Do you recall meeting Dr. Li at that event?
11:29:45 16 A. No, I don't recall meeting Dr. Li at that event.
11:29:49 17 Q. Did you demonstrate any technology at that event?
11:29:55 18 A. Yes. We demonstrated the Echo product, at which the
11:30:01 19 original Echo speaker, and we -- a few of us spoke to it
11:30:04 20 and showed how it answers back. That was the extent of the
11:30:08 21 demonstration.
11:30:09 22 Q. I'm going to introduce Exhibit 2, which is a document
11:30:13 23 with beginning Production No. LCT-AMAZON00016226.
11:30:29 24 This is an email thread between Lexie Burnham and
11:30:33 25 Dr. Peter Li. Do you know who Lexie Burnham is?

11:30:35 1 A. Can you give me -- yeah, Lexie was a recruiter.

11:30:37 2 Q. Did you work with Lexie Burnham in 2014 as part of your

11:30:41 3 recruiting responsibilities?

11:30:41 4 A. Yes, I did.

11:30:42 5 Q. The question is:

11:30:50 6 Is it your understanding that the portion of the

11:30:52 7 email states: As you know, because you were already aware

11:30:56 8 of Li Creative Technologies from having interviewed Dr. Li

11:31:03 9 in 2013.

11:31:06 10 A. Yes, from my interview I knew about his company because

11:31:10 11 he mentioned it in the interview.

11:31:12 12 Q. Does reading this portion of the email refresh your

11:31:17 13 recollection as to whether you also met Dr. Li at the 2014

11:31:21 14 launch event?

11:31:23 15 A. No, it does not, because there were hundreds of people,

11:31:27 16 and I met many people. I have no recollection of Peter Li

11:31:31 17 coming and talking to me.

11:31:33 18 (Videoclip ends.)

11:31:34 19 THE COURT: Does that complete this witness by

11:31:39 20 deposition?

11:31:39 21 MR. LAMBRIANAKOS: Yes, Your Honor.

11:31:40 22 THE COURT: Call your next witness.

11:31:41 23 MR. LAMBRIANAKOS: Your Honor, Plaintiff calls

11:31:51 24 Aleksandar Pance by deposition. He is vice president of

11:31:55 25 technology and hardware development at Amazon's Lab126.

11:31:59 1 Plaintiff's runtime is 29 minutes, 55 seconds;
11:32:04 2 Defendants', 3 minutes, 6 seconds.

11:32:07 3 THE COURT: Proceed with this witness by
11:32:08 4 deposition.

11:32:09 5 MR. LAMBRIANAKOS: Thank you.

11:32:09 6 ALEKSANDAR PANCE, PLAINTIFF'S WITNESS

11:32:13 7 PRESENTED BY VIDEO DEPOSITION

11:32:13 8 (Videoclip played.)

11:32:13 9 Q. Good morning, sir. Can you please state your name for
11:32:16 10 the record?

11:32:16 11 A. Aleksandar Pance.

11:32:19 12 Q. Mr. Pance, for whom do you presently work? Who is your
11:32:25 13 employer?

11:32:25 14 A. Amazon.com is my employer.

11:32:27 15 Q. And what is your job title?

11:32:29 16 A. I'm vice president of technology of hardware
11:32:32 17 development at -- at Lab126.

11:32:32 18 Q. So with your -- in your current capacity, what are your
11:32:39 19 job duties?

11:32:40 20 A. Yes. So in my current capacity, I run a functional
11:32:54 21 organization responsible for hardware architecture and
11:32:59 22 certain technology domains that include display touch,
11:33:08 23 optics, camera technology, battery technology, audio
11:33:15 24 technology, some silicone development and whatnot.

11:33:26 25 And this organization supports all hardware

11:33:37 1 products -- or almost all hardware products and product
11:33:42 2 lines that Lab126 is responsible for.

11:33:44 3 Q. And is one of those hardware lines the Line of Echo
11:33:48 4 products?

11:33:49 5 A. Yes. Yeah, one of those lines is -- is our Echo
11:33:57 6 products, yes.

11:33:58 7 Q. Where did you work immediately before Amazon?

11:34:02 8 A. I worked at Apple in Cupertino before joining Amazon.

11:34:09 9 Q. What did you do at Apple?

11:34:11 10 A. So at Apple, I was part of the product architecture
11:34:24 11 team, and immediately -- or my -- again, my last -- my last
11:34:45 12 assignment at Apple was as a senior prototyping scientist.

11:34:57 13 And I believe I left Apple, I believe, in June
11:35:04 14 2011, to join Amazon in July of 2011, I believe.

11:35:10 15 Q. Sir, do you know what your email address is at Amazon?

11:35:16 16 A. Excuse me, what is the question?

11:35:20 17 Q. What is your email address at Amazon?

11:35:22 18 A. It's A-P-A-N-C-E@Amazon.com.

11:35:35 19 Q. And when you worked at Apple, was it
11:35:44 20 A-P-A-N-C-E@Apple.com?

11:35:44 21 A. I believe so. I also believe that it may have been my
11:35:48 22 first name.last name@Apple.com. But I believe -- I believe
11:35:52 23 it is A-P-A-N-C-E@Apple.com, I believe.

11:35:59 24 Q. In your tenure at Amazon, have you ever requested
11:36:03 25 meetings with any third parties?

11:36:04 1 A. Yes. I believe I have, yes.

11:36:06 2 Q. Sir, have you ever heard of a company called Li

11:36:09 3 Creative Technologies?

11:36:09 4 A. Yes, I did. They're -- they're part of this lawsuit, I

11:36:17 5 guess.

11:36:28 6 Q. So I'm going to introduce as an exhibit a document

11:36:34 7 bearing production label Amazon -- or AMZN0006705.

11:36:42 8 Is this the document you were talking about?

11:36:45 9 And so you said this is an Outlook Note, right?

11:36:50 10 A. That's correct.

11:36:50 11 Q. And you can see under "CN" -- it says, "CN" about

11:37:10 12 two-thirds of the way to the right of the page on the front

11:37:13 13 line, "cn=A-P-A-N-C-E." Do you see that?

11:37:23 14 A. Yeah, CN equals A-P-A-N-C-E. Yes, I see that.

11:37:26 15 Q. That's one of the ways we know this is a note that you

11:37:30 16 had on your computer. That's your user name or --

11:37:32 17 A. Yes.

11:37:32 18 Q. -- user ID -- user ID, right?

11:37:35 19 A. Yes.

11:37:36 20 Q. And then there's a date under the sent?

11:37:41 21 A. Yes.

11:37:42 22 Q. 11/17/2011, right?

11:37:44 23 A. Yes.

11:37:47 24 Q. And then the subject, it says: Sergei, 1:1 10/17,

11:37:59 25 right?

11:37:59 1 A. That's correct.

11:37:59 2 Q. So who is Sergei?

11:38:01 3 A. Sergei is an audio engineer on my team, and he was also
11:38:09 4 at the time -- in October of 2011, he was also the only
11:38:13 5 audio engineer on my team.

11:38:23 6 Q. So that second line -- well, the first line under
11:38:26 7 subject, where it says "not impressed with Li Creative
11:38:30 8 Tech," is that you or Sergei or someone else saying that,
11:38:34 9 or do you just not recall?

11:38:35 10 A. Sorry, it's just blank. Sorry. I cannot -- since I
11:38:40 11 don't recall, I cannot say whether I was not impressed by
11:38:46 12 Li Creative Technologies, Sergei was not impressed, or we
11:38:54 13 were both not impressed, or whoever else was not impressed.

11:39:05 14 Q. So you don't recall anything about that, right? You
11:39:08 15 have no idea who could have been not impressed. You just
11:39:12 16 don't remember, right?

11:39:13 17 A. I don't -- I don't remember.

11:39:14 18 Q. So if you testify at trial in this case, you don't have
11:39:18 19 any basis to tell the jury one way or the other whether you
11:39:22 20 were impressed or not with Li Creative Technologies's
11:39:26 21 presentation, right?

11:39:27 22 A. My testimony is to the facts that I can recall, and the
11:39:51 23 fact is that we have this note, and the fact is that there
11:39:55 24 were emails -- there was an email -- email chain about a
11:39:59 25 meeting, but I don't recall details about that meeting in

11:40:11 1 2011.

11:40:13 2 Q. And no one else at Amazon has any better knowledge than
11:40:16 3 you about that meeting, right?

11:40:18 4 A. So since Sergei is the audio engineer who is still at
11:40:38 5 Amazon, I did ask him if he remembers anything about
11:40:52 6 meeting, the technology, and he -- he doesn't remember any
11:41:02 7 specifics whatsoever.

11:41:02 8 Q. Does this note mean you weren't impressed with Li
11:41:11 9 Creative Technologies?

11:41:11 10 A. The note says: Not impressed with Li Creative
11:41:14 11 Technologies. Investigate audience.

11:41:17 12 That's what the note says.

11:41:18 13 Q. Sitting here today, you don't know what that statement
11:41:24 14 meant, right? You don't know what "not impressed with Li
11:41:30 15 Creative Technology" meant, correct?

11:41:30 16 A. Well, if I take that line out of context of the rest of
11:41:36 17 the note, then I say, I don't know whether that meant I was
11:41:44 18 not impressed, we were not impressed, or Sergei was not
11:41:48 19 impressed.

11:41:49 20 However, the second part of that note says
11:41:52 21 "investigate audience." And that means Audience is a
11:41:58 22 company or used to be a company that had audio-processing
11:42:05 23 technology.

11:42:16 24 And so if we take those two together, that means
11:42:23 25 this note said that we should go investigate or talk to a

11:42:36 1 dif -- or another company. That's -- that's what this note
11:42:41 2 means to me.

11:42:42 3 Q. So you said that you went -- you went to go evaluate
11:42:45 4 Audience. Did you go evaluate anybody else other than
11:42:48 5 Audience?

11:42:48 6 A. That's a great question. I don't -- I don't recall,
11:43:01 7 you know, which audio companies we talked to in 2011 or
11:43:05 8 '12.

11:43:06 9 Q. But sitting here today, you have no recollection of
11:43:13 10 either yourself or Sergei being impressed or not impressed
11:43:18 11 with Li Creative Technologies, right?

11:43:25 12 A. As I said, I don't -- I -- I have no recollection of
11:43:29 13 that meeting. So I don't -- I cannot say whether I was
11:43:33 14 impressed or not impressed.

11:43:35 15 Q. I would like to introduce another document. This one
11:43:41 16 bears production label LCT-AMAZON00016234 through 16244,
11:43:52 17 and this will be Exhibit 6.

11:44:01 18 Is this the email chain you said you reviewed in
11:44:07 19 refreshing your recollection for today's deposition?

11:44:11 20 A. Yes, this was the email chain that had attachment that
11:44:15 21 you mentioned before.

11:44:16 22 Q. And am I correct that you have no recollection of this
11:44:22 23 email outside -- outside of reviewing it for today's
11:44:25 24 deposition?

11:44:25 25 A. That's correct. I obviously acknowledge that on the

11:44:41 1 "to" line, but I don't recall this -- this email chain.

11:44:46 2 Q. So do you see where it says: I am with Lab126,

11:44:51 3 hardware design arm of Amazon. We are very interested in

11:44:57 4 your 3D audio, noise/echo cancellation?

11:45:03 5 A. Yes. And this appears to be an email from Jerry Wu on

11:45:08 6 September 20th, who -- who admin@licreativetech.com with

11:45:08 7 the subject --

11:45:08 8 Q. So --

11:45:08 9 A. It's a meeting request. I see that, yes.

11:45:24 10 Q. So you were at Amazon at that time, right?

11:45:27 11 A. That's correct.

11:45:32 12 Q. And do you see on Page 10 where it says: Below are the

11:45:38 13 audio technology that Lab126 is interested in seeing?

11:45:41 14 Do you see that?

11:45:42 15 A. I do see that, yes.

11:45:46 16 Q. And under there it says: Adaptive beamforming on

11:45:49 17 input, 3D audio, and noise/echo cancellation, other.

11:45:54 18 Do you see that?

11:45:55 19 A. Yes, I see that.

11:45:56 20 Q. No, sir. What I'm asking you is, who did that request

11:46:03 21 come from? That information, who did it come from?

11:46:07 22 A. I have no --

11:46:09 23 ATTORNEY: Objection to form.

11:46:11 24 A. Well, I -- I have no -- I have no knowledge of where

11:46:19 25 this request came from.

11:46:20 1 Q. So you would at least agree with me that it was Amazon
11:46:23 2 that reached out to Li Creative, right?
11:46:25 3 A. Well, more specifically, it was Jerry Wu who reached
11:46:37 4 out to Li Creative.
11:46:38 5 Q. And Jerry Wu worked at Amazon at the time, right?
11:46:47 6 A. Yes. He worked at Lab126 at the time, yeah.
11:46:50 7 Q. Was that part of your job duties in 2011 to meet with
11:46:59 8 vendors and suppliers?
11:47:00 9 A. I wasn't required to meet with vendors or suppliers.
11:47:03 10 Q. But today, that's part of your job duties, right?
11:47:06 11 A. No. Even today I am not required to meet with any
11:47:14 12 suppliers or vendors.
11:47:16 13 Q. Then why do you do it?
11:47:16 14 A. Well, today, I may meet with the suppliers or vendors
11:47:26 15 to resolve some issue that we have, to rely strategically
11:47:30 16 on the -- on the developments, to review roadmap of -- of
11:47:40 17 their products, stuff like that.
11:47:41 18 Q. Do you recall meeting with any other supplier or vendor
11:47:51 19 before October 17th, 2011, at Amazon?
11:47:53 20 A. I don't recall meeting any supplier or vendor in 2011
11:48:01 21 time frame.
11:48:08 22 Q. Do you recall any meetings or demonstrations with any
11:48:14 23 vendor or supplier regarding 3D sound?
11:48:17 24 A. I don't recall any specifics about demos about 3D sound
11:48:20 25 from any supplier or vendor.

11:48:20 1 Q. So why do you say the word "specifics" in your answer?

11:48:24 2 Is there something more general that you remember?

11:48:26 3 A. Yeah. So the reason I say that is because I believe

11:48:38 4 that over the years, I was in bunch of meetings with

11:48:42 5 suppliers that might show microphone arrays, noise

11:48:47 6 reduction, 3D sound, echo cancellation, but I don't recall

11:48:59 7 any specifics whatsoever.

11:49:02 8 Q. So you don't have a recollection of the subject matter

11:49:05 9 of any of the meetings in 2011; is that fair?

11:49:09 10 A. I think it's fair to say that -- is that I don't have

11:49:13 11 any recollection of any meeting that I had in 2011. I

11:49:16 12 think that's fair.

11:49:17 13 Q. And I'm not asking you about any specific meeting. I

11:49:22 14 am asking you about a general subject matter. Do you

11:49:26 15 recall the subject matter of microphone arrays from any

11:49:30 16 meetings with vendors or suppliers in 2011?

11:49:37 17 A. So -- so I don't recall any details about supplier or

11:50:16 18 vendor meetings from 2011, including the possible subjects

11:50:24 19 for those meetings. I just don't recall.

11:50:29 20 Q. Sir, if you take a look at the document you still have

11:50:32 21 in front of you. Flip back to Page 2. I would like you to

11:50:43 22 look at the middle email on the page from Jerry Wu to Li at

11:50:51 23 Li Creative Tech. Do you see your --

11:50:55 24 A. October 3rd, 2011?

11:50:56 25 Q. Yes. Do you see your -- your name on the "to" line

11:51:03 1 there, right?

11:51:05 2 A. Yes, I do.

11:51:06 3 Q. And the email is addressed to Jerry Wu, Li at Li

11:51:13 4 Creative Tech, you, Aleksandar Pance -- Pance, Matt

11:51:20 5 Holland, and Craig Adams, right?

11:51:21 6 A. Yes.

11:51:22 7 Q. And do you see where it says: Hi, Peter. Both Alex

11:51:32 8 and Matt are technical lead. This meeting should be

11:51:35 9 focused on technology. As far as topic goes, I will let

11:51:41 10 Alex and Matt get back to you. Do you see that?

11:51:46 11 A. Yes, I see that. I see that email.

11:51:48 12 Q. Now, do you know whether you or Matt got back to Peter

11:51:51 13 Li about technology?

11:51:52 14 A. So as I said, I don't recall these emails and I cannot

11:52:07 15 speak for Matt. I do not recall getting back to Peter

11:52:18 16 about this. I just assume that if Matt or me or anybody

11:52:26 17 else sent Peter an email, you guys would have it here. So

11:52:35 18 I just -- but I don't -- I don't have a recollection of any

11:52:38 19 emails.

11:52:39 20 Q. So do you see it's addressed to numerous people?

11:52:42 21 A. Yes, it says Alex, Sergei, Matt, David, and colleagues,

11:52:54 22 yes.

11:52:54 23 Q. So and at the bottom there's a Jerry, comma, right?

11:52:57 24 A. Yeah, Jerry -- let's see what it says. Jerry, comma,

11:53:04 25 thanks for facilitating the technical discussion.

11:53:07 1 Yes, I see that.

11:53:08 2 Q. Well, now, regarding the people addressed in this

11:53:18 3 email, Jerry, that's Jerry Wu, right?

11:53:20 4 A. Must have been, yeah.

11:53:21 5 Q. Alex, that's you, right?

11:53:25 6 A. That's correct.

11:53:26 7 Q. Sergei, that's the Sergei we've been talking about at

11:53:31 8 Lab126, right?

11:53:31 9 A. Yes.

11:53:36 10 Q. Matt, that's Matt Holland, right?

11:53:41 11 A. That's right, Matthew Holland, yeah.

11:53:44 12 Q. And then do you see after that it says and colleagues?

11:53:51 13 A. Yes.

11:53:52 14 Q. So do you know -- do you know how many colleagues had

11:53:54 15 attended the meeting other than Alex, Sergei, Matt, and

11:53:59 16 David?

11:54:01 17 A. Well, as I said, I don't recall this meeting, so I

11:54:04 18 cannot confirm or deny who was in the meeting.

11:54:09 19 Q. I want to introduce another exhibit. Before I do,

11:54:16 20 Mr. Pance -- Pance, have you -- you spell your name, Aleks,

11:54:20 21 A-l-e-k-s?

11:54:27 22 A. Well, my full name is A-l-e-k-s-a-n-d-a-r.

11:54:32 23 Q. Do you ever go by Alex, A-l-e-x?

11:54:36 24 A. Yeah, various people would shorten that to Alex,

11:54:41 25 A-l-e-x or sometimes Aleks, A-l-e-k-s.

11:54:54 1 Q. Have you ever gone by Sasha?

11:55:01 2 A. Yes, Sasha is a common nickname for Aleksandar in -- in

11:55:14 3 a place where I grew up, where I was born.

11:55:29 4 Q. And so you have gone by Aleks, A-l-e-k-s, Alex,

11:55:46 5 A-l-e-x, Aleksandar, and Sasha, right?

11:55:51 6 A. Yes, so I believe -- I believe at Apple, some people

11:56:05 7 refer to me as Sasha. I don't know anybody at Amazon that

11:56:08 8 is referring to me as Sasha.

11:56:10 9 Q. Okay. Thank you.

11:56:11 10 I'm going to introduce the next exhibit.

11:56:14 11 Have you ever seen this document before, sir?

11:56:18 12 A. Yeah, this was a document that was in an attachment of

11:56:23 13 that email thread.

11:56:24 14 Q. Do you know if you investigated any of Li Creative

11:56:26 15 Technologies's patents?

11:56:27 16 A. I don't know of any Li Creative patents.

11:56:30 17 Q. You didn't look into them, right? You didn't search

11:56:33 18 for patent numbers. You didn't search for Li Creative

11:56:37 19 Technologies at the Patent Office. You just didn't

11:56:38 20 investigate; is that right?

11:56:39 21 A. Our policy has always been that we don't investigate

11:56:51 22 patents, we don't search for patents, we don't look for

11:56:54 23 patents, we don't discuss other people's patents.

11:56:59 24 As engineers at Amazon, our job is to develop

11:57:07 25 technology, invent things, develop products, features. And

11:57:16 1 it's up to our patent attorneys to see what's patentable
11:57:23 2 and what's protectable, and that's their job.

11:57:26 3 Our job is to invent, develop, and not really to
11:57:31 4 try to judge what's -- what's patentable and what's not.

11:57:35 5 (Videoclip ends.)

11:57:41 6 THE COURT: Does that complete this witness by
11:57:44 7 deposition?

11:57:44 8 MR. LAMBRIANAKOS: Yes, Your Honor.

11:57:45 9 THE COURT: All right. Ladies and gentlemen,
11:57:46 10 we're right at the noon hour. We're going to use this
11:57:50 11 opportunity to break for lunch. I'm told by the clerk's
11:57:53 12 office your lunch is awaiting you in the jury room.

11:57:57 13 If you will simply close your notebooks but please
11:58:01 14 take them with you over the lunch break. Please follow all
11:58:03 15 the instructions I've given you about your conduct,
11:58:05 16 including not to discuss the case among yourselves, and
11:58:08 17 we'll be back to continue with the next Plaintiff's witness
11:58:11 18 immediately after lunch.

11:58:12 19 I would hope to reconvene about 12:45.

11:58:18 20 With that, the jury is excused for lunch.

11:58:21 21 COURT SECURITY OFFICER: All rise.

11:58:22 22 (Jury out.)

11:58:22 23 THE COURT: We stand in recess for lunch.

24 (Recess.)

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and
correct transcript from the stenographic notes of the
proceedings in the above-entitled matter to the best of my
ability.

9 /S/ Shelly Holmes
10 SHELLY HOLMES, CSR, TCRR
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12 State of Texas No.: 7804
13 Expiration Date: 12/31/2020